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EXTRAORDINARY PART II—Section 3—Sub-section (ii) PUBLISHED BY AUTHORITY

No. 2] NEW DELHI, WEDNESDAY, FEBRUARY 12, 1958/MAGHA 23, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 5th February, 1958

S.O. 36.—Whereas the election of Shri Maganlal Radhakishen Bagdi as a member of the House of the People from the Hoshangabad constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Hari Vishnu Kamath, son of Rama Kamath, resident of Dhantoli, Nagpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JABALPUR

Presided over by Shri M. V. Bhide (I.C.S. retired Chief Justice, Madhya Bharat High Court)—*Member*.

ELECTION PETITION CASE No. 1(403) OF 1957

Shri Hari Vishnu Kamath, son of Shri Rama Kamath, aged 49 years, resident of Dhantoli, Nagpur—*Petitioner*.

Versus

Shri Maganlal Bagdi, son of Shri Radhakishan Bagdi, resident of Hansapuri, Nagour—*Respondent*.

ORDER

(Under sections 98 & 99 R.P. Act, 1951)

The Petitioner, Shri Hari Vishnu Kamath, and the Respondent, Shri Maganlal Bagdi, were candidates for election to the House of the People from the Hoshangabad Constituency in Madhya Pradesh at the last General Election. The Petitioner was a candidate on behalf of the Praja Socialist Party, while the Respondent was a candidate on behalf of the Congress. These were the only contesting candidates for the constituency. On 17th March 1957, the Respondent was declared duly elected—having secured 84,532 votes against 59,374 secured by the Petitioner.

2. On the 1st May 1957, Shri H. V. Kamath, the Petitioner, presented this petition to the Election Commission under section 81 of the Representation of the People Act 1951, challenging the election of the Respondent on the ground

that he was guilty of various 'corrupt practices' as detailed in the different paragraphs of the petition and that the result of the election had been materially affected thereby. He, therefore, prayed that the election of the Respondent be declared void under section 100 of the aforesaid Act, but did not make any further prayer that he himself be declared to be duly elected.

3. The Petition was sent by the Election Commission for trial to this Tribunal and 22nd July 1957 was fixed for the first appearance of the parties before the Tribunal. The parties having appeared, the hearing of the petition commenced on that date.

4. The Respondent filed a written statement denying all the material allegations of the Petitioner with regard to the 'corrupt practices' as stated in the petition. He raised further certain preliminary objections to the effect that the particulars given in the petition with regard to several of the alleged 'corrupt practices', were deficient according to law and therefore, prayed that those paragraphs in the petition with regard to the said 'corrupt practices' be struck off. The Tribunal, after hearing the parties, held that further or better particulars were necessary in respect of some of the 'corrupt practices' and ordered the Petitioner on the 12th August 1957 to furnish them within a fortnight. The Petitioner had expressed his willingness to furnish further particulars as far as possible, if so ordered and had not questioned the jurisdiction of the Tribunal in this respect. But after the above order for further and better particulars was passed, the Petitioner filed a petition for a 'Writ Certiorari' in the High Court challenging the legality of the order of the Tribunal for further and better particulars. The High Court held that under section 90(5) of the R.P. Act 1951 as amended in 1956, the Tribunal had no longer any power to order further and better particulars and the proper course for the Tribunal, if it found particulars with respect to any 'corrupt practice' to be insufficient to fulfil the requirements of law as laid down in section 83 of the R.P. Act 1951, was to strike off those portions of the petition, which it finds defective—unless the Petitioner himself applied in the meantime for leave to amend the petition by furnishing necessary particulars. The petition was, therefore, accepted in part by the High Court and the case sent back for further proceedings, after necessary remoulding of the original order. The Petitioner then applied for leave to amend the petition by furnishing necessary particulars with respect to some of the 'corrupt practices', but not in respect of others—though the Tribunal had already given a finding that necessary particulars were lacking in respect of the latter 'corrupt practices'. The question was then considered in the light of the High Court order and the further arguments advanced by the learned counsel for the parties, and paragraphs 13, 14, 15, 16, 17, 22, 24 and a portion of paragraph 28 of the petition in which the particulars were found to be still inadequate for purposes of a fair and effective trial in view of the requirements of section 83 of the R.P. Act 1951, were directed to be struck off by order, dated the 18th October 1957.

5. The trial of the petition was then proceeded with in respect of the remaining paragraphs and issues were framed on the 31st October 1957 on the pleadings of the parties with respect to them. The issues are as below:—

1. (1) Was the printed leaflet in Hindi with the heading 'Chetawani' purporting to be signed by Shrimati Sucheta Kriplani widely circulated amongst the voters in Gadawara Assembly Constituency and Itarsi and Hoshangabad—all parts of the Parliamentary Constituency of Hoshangabad, just before the polling on the 4th March 1957—i.e. between the 2nd and 4th March 1957?
- (2) Was it circulated by the Respondent or by his agents and workers named in the amended petition, with the consent of the Respondent or his Election Agent?
- (3) Was the statement in the aforesaid leaflet that the Petitioner had described the Prime Minister Pandit Nehru as 'Nakabil' i.e. worthless, false?
- (4) Was the aforesaid statement believed to be false or not believed to be true by the Respondent, his agents and workers, who circulated the leaflet?
- (5) Does the aforesaid statement relate to the personal character or conduct or candidature of the Petitioner within the meaning of section 123(4) of the R.P. Act and was it reasonably calculated to prejudice the prospects of the Petitioner's election?

- (6) Does the publication of the aforesaid statement, if proved, constitute a 'corrupt practice', within the scope of section 123(4) of the Representation of the People Act 1951?
- (7) On such of the above facts as may be proved, was the election of the Respondent void under section 100 (1) (b) of the R.P. Act 1951?
2. (1) Was the leaflet in Hindi, with the heading 'Savdhan' purporting to be signed by Shri Shyam Lal Jaiswal, widely circulated in the district of Narsimhapur between the 23rd February 1957 and 4th March 1957, by the Respondent and/or his agents and workers, named in the amended petition?
- (2) Is Shri Shyam Lal Jaiswal, a prominent and active member of the District Congress Committee, Narsimhapur?
- (3) Do the contents of the leaflet contain any statements affecting the personal character or conduct or candidature of the Petitioner, within the meaning of section 123(4) of the R.P. Act 1951 and were they reasonably calculated to prejudice the prospects of the Petitioner's election?
- (4) If so, were the aforesaid statements false and believed to be false or not believed to be true by the Respondent, or his agents and workers who circulated the pamphlet?
- (5) On such of the above facts as may be proved, was the Respondent guilty of any 'corrupt practice' under section 123(4) and his election, therefore void under section 100(1) (b) of the R.P. Act?
3. (1) Did the Respondent address in Hindi any public meetings at Narsimhapur on the 19th February 1957 and at Gadawara on the 3rd March 1957 and were they largely attended?
- (2) Did the Respondent while addressing each of the aforesaid meetings make a statement to the effect that 'Kamath (the Petitioner) is receiving lakhs of dollars from America to discredit Pandit Nehru and his Government'?
- (3) Was the aforesaid statement false and believed to be false or not believed to be true by the Respondent?
- (4) If so, does the statement relate to the personal character or conduct or candidature of the Petitioner and does its publication constitute a 'corrupt practice' within the meaning of section 123(4) of the R.P. Act 1951 and is the election of the Respondent, therefore, void under section 100(1) (b) of that Act?
4. (1) Did the Respondent address in Hindi a public meeting at Bankhedl, tahsil Sohagpur, district Hoshangabad on the 23rd February 1957 and was it largely attended?
- (2) Did the Respondent while addressing the aforesaid meeting make a statement to the effect "What do Kamath and Niranjan Singh (P.W.P. candidate) think of themselves? If they come before me, I shall shoot them"?
- (3) If so, does the above statement constitute a 'corrupt practice' within the meaning of section 123(2) of the R.P. Act 1951 and is the election of the Respondent, therefore, void under section 100(1) (b) of that Act?
5. (1) Did the Respondent address in Hindi a public meeting at Gadawara on the 3rd March 1957?
- (2) If so, did he, while addressing the meeting make a statement to the following effect:—

"Whether I win or lose, I shall see that Niranjansingh and Kamath are buried deep in the valley of Narmada river, and I shall go only after performing the 13th day *Shradh* ceremony?"
- (3) If the Respondent made the aforesaid statement, was it likely to interfere with the free exercise of the rights of the voters in the Constituency and does it constitute a 'corrupt practice' within the meaning of section 123(2) of the R.P. Act, 1951? If so, is the election of the Respondent void under section 100(1) (b) of that Act?
6. (1) Did the Respondent address a public meeting in Hindi at Itarsi on the 1st March 1957?

- (2) If so, did he while addressing the meeting make a statement of the following effect with respect to the Petitioner:—
- “Kamath always supports American Policy in his speeches. His photo appears often in American papers. American papers often praise him and he gets dollars from America?”
- (3) If the Respondent made the aforesaid statements, do they relate to the personal character, conduct, or candidature of the Petitioner within the meaning of section 123(4) of the R.P. Act?
- (4) Were the aforesaid statements false and believed to be false or not believed to be true by the Respondent?
- (5) Was the publication of the aforesaid statement calculated to prejudice the Petitioner's prospects of election and does it constitute a 'corrupt practice' within the meaning of section 123(4) of the R.P. Act 1951?
- (6) On such of the above facts as may be proved, was the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951?
7. (1) Did Shrimati Indira Gandhi, daughter of the Prime Minister of India and a member of the Congress Working Committee make a statement before the public meetings at Allahabad on the 22nd January and 4th February 1957 to the effect that the Praja Socialist Party was getting foreign financial aid and was it prominently published in newspapers in India and widely circulated in Madhya Pradesh including Hoshangabad constituency?
- (2) (i) Did the Respondent and his agents and workers (named in the amended petition) repeat and utilise the above statement of Shrimati Indira Gandhi, so as to convey that the Petitioner himself was getting foreign aid in the same manner, in their speeches between the 6th February and 22nd February 1957 at the places and times named (as alleged in the amended petition):—

Name	Place	Time
Respondent	Several villages in Gotegaon Constituency.	3rd week of February 1957.
M. N. Gurao.	Itarsi Constituency.	2nd week of February 1957.
S. N. Mushran.	Gotegaon Constituency.	3rd week of February 1957.
Sarladevi Pathak.	Narsimhapur Constituency.	—do—
Kishorilal Paliwal.	Gadarwara Constituency.	—do—
Narayan Singh.	Sohagpur Constituency.	—do—
Babulal Jain	Chichli (Gadarwara tehsil.)	On or about 15th Feb. 1957.

- (ii) Was the aforesaid statement false and did the Respondent and the other persons named above know the aforesaid statement to be false or did not believe it to be true?
- (iii) Did the workers and agents of the Respondent repeat and utilise the aforesaid statement in their speeches as given above with the consent of the Respondent or in his interest?
- (3) Did the above statement relate to the personal character, conduct, or candidature of the Petitioner who was a P.S.P. candidate for election and was it reasonably calculated to prejudice the prospects of his election?
- (4) On such of the above facts as may be proved, is the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951?
8. (1) Did Shri M. N. Gurao, Election Agent of the Respondent address any public meeting in Hindi at Itarsi on the 3rd March 1957?
- (2) If so, did he make any statement to the following effect:—“Guns are still on our shoulders. We want to tell our opponents that we shall even suck their blood. We and our friends have still got sufficient weapons. We will even open fire in this election and shall play ‘Holi’ with their blood?”
- (3) Do the above statements constitute an attempt to interfere or were they calculated to interfere with the free exercise of the electoral rights of voters and do they constitute a 'corrupt practice' within

the meaning of section 123(2) of the R.P. Act? If so, is the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951?

9. (1) Did Shri Pathak, President of the District Congress Committee and husband of Shrimati Sarla Devi Pathak, State Assembly candidate from Narsimhapur constituency, hire tongas of Komalsingh and others at Narsimhapur on the 25th February 1957 at the rate of Rs. 10/- per day per tonga and was the Respondent also a party to the hiring of these tongas?
- (2) Were these tongas hired to carry electors for voting in favour of Congress candidates in the Parliamentary as well as the Assembly Constituency and were the voters actually conveyed to polling booths therein?
- (3) If so, does the hiring of tonga constitute a 'corrupt practice' within the meaning of section 123(5) of the R.P. Act?
- (4) If the Respondent is not proved to be a Party to the hiring of the above tongas, were the tongas hired, at any rate, in his interest even if the act was committed without his consent?
- (5) If so, does the hiring constitute a 'corrupt practice' under section 123(5) of the R.P. Act and has it materially effected the result of the election?
- (6) On such of the above facts as may be proved, is the election of the Respondent void either under section 100(1)(b) or section 100(1)(d)(ii) of the R.P. Act?
10. (1) Did the Respondent and Kishorilal Paliwal, Congress candidate for the State Assembly from the Gadarwara constituency hire 17 tongas on 4th March 1957, to carry voters to polling booths in Gadarwara town at the rate of Rs. 15/- per tonga per day and were voters so carried at the instance of the Respondent and Kishorilal?
- (2) Were the following persons amongst the 17 from whom tongas were hired as stated above:—
 - (1) Lalloolal, son of Ganga of Azad Ward, Gadarwara,
 - (2) Ram Ratan Lohar, age 30 years, Hanuman Ward, Gadarwara,
 - (3) Baiju Dhimar, Azad Ward, Gadarwara,
 - (4) Waheb Muslim, of Hanuman Ward, Gadarwara.
- (3) On the above facts, if proved, was the Respondent guilty of 'corrupt practice' under section 123(5) of the R.P. Act and is his election void under section 100(1)(b) of the R.P. Act 1951?
11. (1) Did Shri Mushran, Congress candidate for the State Assembly from Gotegaon, along with the Respondent go to the village Imalia on or about the 20th February 1957 and call Chhidamilal, Patwari and tell him that the prospects of the Congress candidates in that area were very poor and that unless he assisted the Congress candidates and their prospects improved, he would be dismissed?
- (2) Does the above action of the Respondent amount to a 'corrupt practice' falling within the purview of section 123(2) or section 123(7) or both of the R.P. Act 1951?
12. (1) Did Shri Mushran, Congress candidate for the State Assembly from Gotegaon along with the Respondent go to the village Pindrai, on or about the 19th February 1957 and direct Tarachand, teacher of Pindrai who was then working under Janapada Sabha to work for the Congress candidates? Did Tarachand ask for a timber-license for repairing his house and did he obtain the same in consideration of his work for the Congress candidates in the election?
- (2) Is Tarachand, a Government servant within the meaning of section 123(7) of the R.P. Act 1951?
- (3) Does the above act of the Respondent, if proved, amount to a 'corrupt practice' within the meaning of section 123(1) or 123(7) or both of the R.P. Act 1951?

- (4) On such of the facts as may be proved, is the election of the Respondent void under section 100(1) (b) of the R.P. Act 1951?
13. (1) Did the Respondent along with Shrimati Sarla Devi Pathak, Congress candidate for the State Assembly from the Narsimhapur Constituency visit the village Singhpur and address a public meeting on the 19th February 1957?
- (2) Did the villagers represent to them that they needed a well as there was dearth of water supply?
- (3) Did the Respondent along with the villagers select a site for the well on land belonging to one Vishwanathsingh?
- (4) Did the Respondent and Shrimati Sarla Devi Pathak perform the digging ceremony of the well by breaking a coconut and promise that the well would be constructed after the election?
- (5) If so, does the Respondent's promise constitute a 'corrupt practice' falling within the purview of section 123(1) of the R.P. Act 1951 and is his election, therefore, void under section 100(1) (b) of that Act?
14. (1) Did Shrimati Sarla Devi Pathak, Shri Mushran, Shri K. L. Paliwal and Shri M. G. Wike, Congress M.P. and President of the Adivasi Organisation in M.P.—address on the 13th February 1957 a largely attended public meeting of Adivasis (Scheduled Tribe) at village Madanpur, tahsil Gadarwara?
- (2) Did they tell the Adivasi voters that if they voted for the Congress, the Government would give them bullocks and land and reserve an Assembly seat for them in that area?
- (3) Was the aforesaid promise made by the speakers with the consent of the Respondent or at any rate in his interest?
- (4) Does the above promise constitute a 'corrupt practice' under section 123(1) or 123(7) of the R.P. Act?
- (5) If the above promise was made without the consent of the Respondent, but in his interest, does it amount to a 'corrupt practice' within the meaning of section 123(1) or/and 123(7) of the R.P. Act and has it materially affected the result of the election?
- (6) On such of the facts as may be proved, is the election of the Respondent void under section 100(1) (b) or 100(1) (d) (ii) of the R.P. Act?
15. (1) Did the Respondent, Deputy Minister—Mushran and Shri Wike address a largely attended meeting of the Adivasis at Bouchhar on the 22nd February 1957?
- (2) Did Shri Wike, on that occasion, advise Adivasis, who were working for P.S.P. candidates that they should not work on their land and that when the land became barren, it would be distributed amongst the Adivasis?
- (3) Was the above promise made with the consent of the Respondent?
- (4) If so, was the Respondent guilty of 'corrupt practice' falling within the scope of section 123(1) of the R.P. Act 1951?
- (5) If the aforesaid promise was not made by Shri Wike with the consent of the Respondent, was it made at any rate in his interest? If so, has the result of the election been affected thereby materially?
- (6) On such of the facts as may be proved, is the election of the Respondent void under section 100(1) (b) or 100 (1) (d) (ii) of the R.P. Act?
16. (1) Did the Tahsildar, Narsimhapur (Shri K. S. Rao) issue a general letter on 31st January 1957 at Camp Bouchhar saying that the people would get free 'Nistar'?
- (2) Was this done at the instance of the Congress candidates including the Respondent with a view to influence the voters in their favour?

- (3) Did the letter contravene any rules of the Department on the subject and if so, which?
 - (4) Does the action of the Congress candidates including the Respondent in this behalf, amount to a 'corrupt practice' under section 123(1) and/or 123(7) of the R.P. Act 1951?
 - (5) On such of the above facts as may be proved, is the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951?
17. (1) Did the Tahsildar, Narsimhapur issue 130 special permits as detailed in Annexure F of the petition to 'Kisans' between 1st February 1957 and 24th April 1957?
- (2) Was this done to bribe these influential men and other electors to vote for the Congress candidates and at the instance of these candidates including the Respondent and also Shri Pathak, President of the District Congress Committee?
 - (3) Were these permits issued contrary to all rules and procedure of Land Revenue and Forest Laws?
 - (4) If the above action of the Tahsildar, a Government servant, is proved to have been taken at the instance of the Respondent, does it amount to a 'corrupt practice' under section 123(1) and/or 123(7) of the R.P. Act 1951?
 - (5) On such of the above facts as may be proved, is the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951?
18. (1) Did the Deputy Commissioner, Narsimhapur, Tahsildar Gadarwara, Divisional Forest Officer, Hoshangabad issue a number of leaflets and pamphlets as given below liberalising the 'Nistar' rights and distribute them broadcast in the Hoshangabad constituency, with the object of furthering the prospects of the election of the Congress candidates:—
- (i) Circular "CHH" dated 16th December 1956 issued from the office of the Deputy Commissioner, Narsimhapur;
 - (ii) Circular (Nistar Panchayat ke Karya sambhandhi suchna) from the office of the Deputy Commissioner, Narsimhapur;
 - (iii) Office of the Tahsildar-Kanungo 57 dated 21st January 1957;
 - (iv) Office of the Deputy Commissioner, Narsimhapur No. K/Nistar dated 22nd February 1957;
 - (v) Office of the Deputy Commissioner, Narsimhapur No. K. B. dated 25th February 1957;
 - (vi) Office of the Deputy Commissioner, Narsimhapur No. Kanungo/57 dated 1st March 1957.
- (2) Was this action taken at the instance of Shri S. N. Mushran, Shrimati Sarla Devi Pathak, Shri D. P. Pathak, Kishorilal Paliwal and Respondent, as alleged in the amended petition?
 - (3) On such of the above facts as may be proved, was the Respondent guilty of 'corrupt practices' within the meaning of section 123(1) or 123(7) of the R.P. Act and is his election void under section 100(1)(b) of that Act?
19. (1) Did the Respondent, his election agent—M. N. Gurao, Balkishan Sharma of Itarsi and Girjashankar Shukla of Itarsi warn the Muslims at Itarsi between 26th February and 3rd March 1957—as alleged in the amended petition—that if they did not vote for the Congress they would be sent to Pakistan?
- (2) If so, was the Respondent guilty of a 'corrupt practice' under section 123(2) of the R. P. Act 1951 and is the election of the Respondent void under section 100(b) of the Act?
20. (1) Did the Tahsildar, Gadarawara publish a Hindi circular dated the 30th January 1957 inviting applications from Adivasis and Harijans by 20th February 1957 and circulate it amongst the voters between 30th January and 20th February 1957?
- (2) Was this action taken at the instance of Shri D. P. Pathak, President, District Congress Committee, Shri K. L. Paliwal, Shri Shyam Sunder

Narayan Mushran and the Respondent with the object of bringing the influential persons amongst Harijans and Adivasis to vote in their favour?

(3) If the above action of the Tahsildar was taken at the instance of the Respondent (along with others), does it amount to a 'corrupt practice' under sections 123(1) or 123(7) or both of the R. P. Act 1951?

(4) On such of the above facts as may be proved, is the election of the Respondent void under section 100(1)(b) of the R. P. Act 1951?

It may be mentioned that the issues were framed in consultation with the counsel for the parties and were accepted as correct and sufficient to cover the points in dispute between the parties.

6. The Petitioner produced 56 witnesses, while the Respondent produced 10 witnesses. Both parties relied upon a certain amount of documentary evidence.

7. Before proceeding to discuss the evidence relating to the various items, it would not be out of place to refer to certain general principles governing assessment of the value of evidence relating to 'corrupt practices' in election cases. It has been laid down in many reported election cases, that charges of 'corrupt practices' in election inquiries are of a quasi-criminal nature and the burden of proof lies on the Petitioner to establish such charges beyond any doubt and that the benefit of doubt, if any, must be given to the Respondent (see e.g., 8 E.L.R. 105 and 12 E.L.R. 107). This principle was approved by the Supreme Court in a recent decision reported as A.I.R. 1957 S.C. 444 (at page 46—para 25) in which their Lordships remarked that 'it should not be forgotten that the charges of corrupt practices are quasi-criminal in character and that the allegations relating to them must be sufficiently clear and precise to bring home the charges to the candidates and judged by that standard'. Another principle to be borne in mind is that laid down by the Supreme Court in 9 E.L.R. 231, viz., that—

"It is well settled that the success of a candidate who has won at an election should not be lightly interfered with—though care has to be taken at the same time to safeguard the purity of the election process and to see that the people do not get elected by flagrant breaches of the law and corrupt practices."

8. Some of the issues raised important questions of law, but they were not tried as preliminary issues in view of the directions of the Supreme Court in 9 E.L.R. 294 (299). Evidence has, therefore, been recorded fully and findings given on all questions of facts as well as of law.

9. Issues 9(1) to 9(6), 16(1) to 16(5), 19(1) and (2) and 20(1) to 20(4).—It has been stated above that certain paragraphs of the petition had to be struck off owing to the Petitioner's failure to supply necessary particulars according to law and hence no issues were framed with reference to them. As regards the remaining paragraphs the Petitioner has failed to produce any evidence in support of the issues framed with respect to the corrupt practices alleged in the following paragraphs:—

Paragraph 11—Issues No. 9(1) to 9(6),

Paragraph 23—Issues No. 16(1) to 16(5),

Paragraph 28—Issues No. 19(1) to 19(2),

Paragraph 29—Issues No. 20(1) to 20(4).

As regards paragraph 23 the Tahsildar, K. S. Rao has deposed that he had issued a letter to the Patel of Bouchhar on 31st January 1957 to the effect that the Patel could issue permits to villagers *according to rules*. But this letter itself was not produced. It was said to be in possession of another witness, who was to be produced later. But no such witness or document was produced. The evidence of the Tahsildar does not show that there was any general order for issue of free Nistar. Thus there is no evidence in support of the allegations in para 23. As regards the remaining issues referred to above, no evidence was produced at all. The above issues are, therefore, decided against the Petitioner for want of evidence in support of them.

10. It may be mentioned here that some of the 'corrupt practices' alleged in this petition were also alleged in Election Petition No. 2 of 1957 (Shri K. L. Tiwari vs. Shri S. N. Mushran) tried by this Tribunal e.g., those in paras 7(b), 17, 18, 20, 21, 25 and 26 and the issues with respect to them were practically

common to both these cases. But the evidence produced in the two cases was not the same and hence those issues have to be decided independently on the merits of the evidence produced in each case.

11. I now proceed to the discussion of issues. But before discussing the evidence it is necessary to refer to one important point which was alleged by the Petitioner in para 4 of his petition which runs as follows:—

"4. That simultaneously with the Election to the House of the People, the Election to 8 seats in the Madhya Pradesh Legislative Assembly took place in the said Constituency. The Election campaign, publicity and propaganda of Congress Candidates for Election to the State Assembly as well as to the House of the People were conducted jointly, and the Assembly candidates were in fact, and in law, the agents of the Respondent and *vice-versa*."

12. The Respondent has admitted the correctness of the allegations in this paragraph in his written statement (see para 4). The various Congress candidates for the Madhya Pradesh Legislative Assembly and the Parliamentary constituencies must, therefore, be considered to be 'agents' of one another according to law. It is admitted that these candidates were as shown below (*vide* admission of counsel for the Parties in Appendix B of this order):—

Name of Constituency	Praja Socialist Party candidate	Congress candidate
Hoshangabad Parliamentary Constituency consisting of 6 Assembly Constituencies <i>viz.</i> ,	Shri H. V. Kameth (Petr.)	Shri M. L. Bagdi (Resp.)
Goteagaon	Thakur Shashibhushan Singh	Shri S. N. Mushran
Narsimhapur	Shri M. S. Killedar	Shrimati Sarla Devi Parhak.
Gadarwara	<i>General seat</i> Th. Niranjansingh Gokul <i>Reserved „</i>	Shri K. L. Paliwal <i>Shri Nabha</i>
Sohagpur	<i>General</i> Shri Durgaprasad Jaiswal <i>Reserved</i> Shri Premvijay Shah	Shri Narayansingh Jaiwar <i>Smt. Manja Bai</i>
Itarsi	Shri Karansingh Tomar	Shri Harprasad Chaturvedi
Hoshangabad	Shri Jinwardas Jain Fouzdar	Shri Nanhelal

13. The Respondent Shri M. L. Bagdi, when examined as a witness, has tried to go back on the above admission and has stated that the Congress propaganda was joint only in connection with the visit of All India leaders to the above constituencies and that, otherwise, the election propaganda of the Congress candidates were quite distinct. But he has admitted at the commencement of his cross-examination that instructions were given by him to his counsel (Shri R. S. Dabir) with respect to each paragraph of the petition and the written statement filed before this Tribunal was drafted according to his instructions. Shri Bagdi has stated that he was educated only upto the Middle School standard as he began taking part in political agitation when he was only 15 and was not, therefore, well acquainted with English. But he has admitted that the written statement was interpreted and explained to him and was then signed and verified by him. This written statement was filed on 22nd July 1957. After the petition was amended, a further written statement in reply to the amended petition was filed on the 9th December 1957 and in that 'amended return' also the previous admission by the Respondent of para 4 of the petition is repeated. He has tried to go back on his admissions in some other paragraphs of the written statement also e.g. those in his replies to paragraphs 7(c), 17, 18 and 19 of the petition as will be pointed out in discussing the evidence with respect to those paragraphs. It cannot be believed that a leading and experienced counsel like Shri Dabir would have drafted the written statement without carefully taking full and clear instructions on each point from the Respondent and explaining the written statement to the Respondent clearly. If, indeed, counsel was guilty of such gross negligence, one should have expected the Respondent to replace him forthwith by another counsel and put him in the witness box to prove his negligence. But nothing of this kind was done and Shri Dabir continued to represent the Respondent to the end and even argued his case. In view of all these circumstances, the Respondent's modification of the admission of para 4 of the petition as given in his deposition, cannot be accepted. I shall, therefore, hold on the basis of

the Respondent's admission in his written statements of the contents of paragraph 4 of the petition, that the allegations in para 4 of the petition are correct, viz., that 'Election campaign—publicity and propaganda of the Congress candidates for the Election to the State Assembly as well as to the House of the People were conducted jointly and the Assembly candidates were in fact and in law, the agents of the Respondent and *vice-versa*.'

14. *Issues No. 1(1) to 1(7)—Paragraph 7(a) of the petition.*—The first set of issues No. 1(1) to 1(7) relates to a leaflet in Hindi (Ex. P-1) with the heading 'Chetawani' (warning or caution), which purports to be signed by Shrimati Sucheta Kriplani. The leaflet is alleged to contain false statements of fact in relation to the personal character, conduct and candidature of the Petitioner and is said to have been widely published by the Respondent and his agents and workers just before the polling date (4th March) to prejudice his prospects of election. The Petitioner's case is that the publication of this leaflet constitutes a 'corrupt practice' under section 123(4) of the R. P. Act 1951.

15. The contents of the leaflet may be translated as below:—

"Voters will please read and consider. 'Warning of Sucheta Kriplani to the Public'.

Being busy with my own election, I am unable to be with you (to reach you) personally. But, for the good of the nation, I ask you not to vote for Kamath who described Pandit Jawaharlal Nehru, Emperor of the Heart of India as an incompetent (Nakabil) Prime Minister and whose opposition to Nehruji is harmful to the nation and against the healthy traditions of the country.

It is hence that I appeal to you to put your vote in the box with the symbol of a pair of bullocks of the Congress candidate, Maganlal Bagdi. I also appeal to you to vote for the Congress candidate for the State Assembly so as to make them successful.

Sucheta Kriplani
New Delhi."

16. Before discussing the evidence relating to the issues with respect to the above leaflet, it will be useful to refer to the provisions of clause (4) of the aforesaid section 123 of the R. P. Act 1951, to enable a correct estimate being formed about the relevance and significance of the evidence of the parties. Section 123(4) of the R. P. Act (as amended in 1956) runs as follows:—

"4. The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice to prospects of that candidate's election."

17. It will appear from the above provisions that, in order to bring the publication of the leaflet within the purview of this section, it is necessary for the Petitioner to prove that—

- (i) the leaflet was published by the Respondent, his agent, or some other person;
- (ii) the leaflet contains false statements of facts;
- (iii) the said false statements were believed to be false or not believed to be true by the persons who published the leaflet;
- (iv) the statements are in relation to the personal character, conduct or candidature of the Petitioner, and,
- (v) the publication of the leaflet was reasonably calculated to prejudice the prospects of the Petitioner's election.

18. For the purposes of section 123, the word 'agent', according to explanation 1 to that section includes an election agent, a polling agent, and any person, who is held to have acted as an agent in connection with the election with the consent of the candidate.

19. Issues 1(1) and 1(2) relate to the publication of the leaflet 'Chetawani'. The Petitioner has produced the following evidence with respect to these issues, viz.

- (a) that the Respondent himself read out the leaflet 'Chetawani' in the course of his speech at a meeting at Gadarwara on the night of 3rd March 1957;
- (b) That the Respondent's Election Agent, Shri M. N. Gurao, similarly read the leaflet in the course of his speech at a meeting at Itarsi, on the 2nd and 3rd March, some of whom were Respondent's agents,—
- (c) That the leaflet was distributed by different persons in various villages on the 2nd and 3rd March, some of whom were Respondent's agents,—in fact or law.

20. As regards (a), the Petitioner has produced five witnesses who have deposed that they were present at the Congress meeting at Gadarwara, held on the night of the 3rd March 1957, and that in the course of his speech at that meeting the Respondent read the leaflet 'Chetawani' and copies of it were distributed at the meeting—viz. Devicharan (P. W.), Girirajsingh (P.W. 10), Chhotelal (P. W. 19), Gourishankar (P.W. 29), and Babulal Tandon (P.W. 30).

21. Devicharan (P.W. 9) is a member of the Municipal Committee of Narsimhapur. He says that he was elected to that Committee as an independent candidate and did not belong to any party. Girirajsingh (P.W. 10) belongs to well-to-do and respectable family of Narsimhapur. One of his brothers is Collector of Jabalpur, while another is an Officer in the Army. He is the founder of a College at Narsimhapur, which is named as 'Narsimha Mahavidyalaya'. He is also Chairman of the Public Works Standing Committee of the Janpada Sabha, Narsimhapur. He states that he was a member of the P.S.P. (Praja Socialist Party) but left it about a year before the last election. But from Ex. P-13 (which he has admitted)—a leaflet issued by him during the last election, it appears that his sympathies are with the P.S.P. and he was actively helping that Party during the last election. Chhotelal (P.W. 19) has been a member of the Municipal Committee, Gadarwara for ten years. He does not belong to any party and seems to be disinterested. Gourishankar (P.W. 29) was, till recently, a member of the Congress Party. He was member of the District and Provincial Congress Committees, but resigned from that Party before the last election (about 18th January 1957) as he was dissatisfied with the nomination of candidates of Congress at the last election and also felt that the members of the Congress were not following the principles and ideals of the Congress. He then joined the P.S.P. and was chosen as a candidate of that Party for the Parliamentary constituency of Chhindwara at the last election, but was not successful. He is an agent of the Burmah-Shell Company at Narsimhapur. Babulal (P.W. 30) is a tailor by profession and was working for the P.S.P. at the last election.

22. Leaving out Babulal (P.W. 3) the other witnesses produced by the Petitioner appear to be educated persons of good social status. Giriraj Singh (P.W. 10) and Gourishankar (P.W. 29) appear to be interested in the P.S.P., but their evidence is corroborated by the evidence of Devicharan (P.W. 9) and Chhotelal (P.W. 19), who seem to be quite disinterested and have not been shown to have any motive for giving false evidence against the Respondent.

23. The Respondent has admitted that he made a speech at the Congress meeting held at Gadarwara on the night of the 3rd March 1957, but has denied that he read out the leaflet 'Chetawani' in the course of his speech or that the leaflet was distributed at that meeting. He has deposed that he knew nothing about the leaflet till he got a copy of the present Election Petition long after the election.

24. The Respondent has produced two witnesses in support of his statement viz. Sukhraj (R.W. 4) and Harprasad Patel (R.W. 5). Both these witnesses have deposed that they were present at the aforesaid Gadarwara Congress meeting on the night of the 3rd March 1957 and heard the Respondent's speech; and that the Respondent did not read out the leaflet 'Chetawani' at the meeting,—nor were any copies of the leaflet distributed there. Sukhraj is a grain merchant of Gadarwara. It appears that he was present at the meeting only by accident. He had gone to the railway station to meet his brother-in-law who was passing through by the mail and on his way back, he had to stop as he was on a motor-cycle and found the road blocked on account of the meeting. He, therefore, stopped for a time and heard Shri Bagdi's speech. He says he was standing with his motor-cycle at a distance of some 70 or 75 yards from the platform, where Shri Bagdi was speaking. He admits, moreover, that he was talking to his friends also side by side. It seems, therefore, very doubtful if he heard all that was

said by Shri Bagdi. The other witness Harprasad is a cultivator. He is now vice-Chairman of the Gadarwara Janapada Sabha but he was only a Pleader's Munshi till recently. He seems to be an interested witness. He admits that he worked for Kishorilal Paliwal, Congress candidate from the Gadarwara constituency for the State Assembly at the last election and that he lives in his house when he visits Gadarwara. Kishorilal Paliwal is Chairman of the Janpada Sabha of which he is the Vice-Chairman.

25. The evidence of the Petitioner's witnesses seems to be much more weighty and reliable than that of the Respondent. Apart from this, there are some important circumstances, which lend support to the evidence of the Petitioner's witnesses. Gulabsingh (P.W. 6), Proprietor of the Bharat Printing Press, where the leaflet 'Chetawani' was printed has deposed that the leaflet was printed on an order given by one Dalchand Gupta on the 1st March and 5,000 copies were printed and delivered on the 2nd March 1957. Gulabsingh did not know Dalchand Gupta and no one has apparently been able to trace him. It seems, however, obvious from the contents of the leaflet that it was published in the interest of the Congress candidates and to defeat the Petitioner. The publication of this leaflet appears to have been foreshadowed in a note signed by one Ramrao Vaghude at the foot of a leaflet with the heading "Open letter of Chaudhary Nitirajsingh to Shri Kamath" (Ex. P.8), which was produced on behalf of the Respondent and put to the Petitioner in the course of his cross-examination. In this foot-note by Ramrao Vaghude, it is stated that a letter by Sucheta Kriplani was going to be shortly published in which she had painted a picture of Kamathji who was opposing Pt. Jawaharlal Nehru, Emperor of the Heart (of India). The language of the note leaves no doubt that the publication of the leaflet 'Chetawani' had been planned as a part of the election propaganda against the Petitioner. Its publication seems to have been intentionally delayed till the 2nd March, so as to leave little time for publication and circulation of any effective reply. 5,000 copies were printed and delivered on the 2nd March 1957 and as 4th March was the polling date, every effort must, in all probability, have been made to give wide publicity to it—specially at large gatherings during the 2 days before the election. The publication of a leaflet of this kind at a meeting is more convenient and its effect can be strengthened by the speeches at the meeting. What better opportunity could there be then for the Respondent and his election agent to give wide publicity to the leaflet than at the mass meetings at Gadarwara and Itarsi on the eve of the election? In the circumstances, it seems highly probable that the Respondent took the opportunity to read and give publicity to the leaflet himself at the meeting at Gadarwara on the night preceding the date of polling (4th March 1957) as deposed to by the Petitioner's witnesses.

26. The Respondent's statement that he knew nothing about the leaflet 'Chetawani' till he received a copy of the present petition is difficult to believe in view of the facts that its publicity had been deliberately planned and some five thousand copies of it had been printed and were evidently intended to be widely distributed on the eve of the election day. Respondent's attempt to go back on important admissions made in his written statement to which reference has been already made throws doubt on his veracity. The evidence produced by him in defence is meagre and unconvincing as shown above.

27. Taking all the above facts into consideration, I hold it to be proved that the leaflet 'Chetawani' was read by the Respondent at the meeting of the Congress Party at Gadarwara on the 3rd March and was thus given publicity by him.

28. As regards (b), Shri M. N. Gurao, Election agent of the Respondent is similarly alleged to have read the leaflet 'Chetawani' at a meeting held at Itarsi on the night of the 3rd March. In support of the allegation, the Petitioner has produced the following witnesses viz. Govind Singh (P.W. 26), Hitvinod (P.W. 27), Sheetalprasad (P.W. 43) and Qayamul Hasan (P.W. 55). All these witnesses have deposed that they were present at the Congress meeting at Itarsi on the night of the 3rd March and heard Shri Gurao's speech. Govind Singh (P.W. 26), a cultivator of a neighbouring village who is a matriculate, has deposed that Shri Gurao read the leaflet at the end of his speech and copies of it were distributed at the meeting immediately afterwards. Hitvinod (P.W. 27), a fuel-seller of Itarsi, has not made any reference at all to the leaflet. This may be a mere omission, as he was not questioned on the point and has not said anything as to whether the leaflet was or was not read or distributed at the meeting. Sheetalprasad (P.W. 43), a Pleader, has stated that the leaflet was read by Shri Gurao and it had been already distributed before the meeting. Qayamul Hasan (P.W. 55) says that the leaflet was merely referred to but not read by Shri Gurao and that it had been already distributed in the town. He, however,

says that he got a copy of the leaflet at the meeting. He was apparently not present at the meeting throughout and used to go out at intervals to do some canvassing in the bazar. Sheetal Prasad (P.W. 43) is a member of the P.S.P., while Qayamul Hasan (P.W. 55) was an active worker being the local secretary of the P.S.P.

29. Shri Gurao (R.W. 8) who was produced as a witness by the Respondent, denied that he read the leaflet at the meeting at Itarsi on the night of the 3rd March, when he spoke there. He has gone further than his master, the Respondent, and stated that he saw the leaflet for the first time when it was put to him, when he was examined as a witness before this Tribunal. The two other witnesses produced by the Respondent in connection with the meeting were—Baburao Pali (R.W. 3) and Rameshchandra Rawat (R.W. 7). Baburao Pali (R.W. 3) is posted as a Loco Foreman on the Central Railway at Itarsi. He says that he was present at the meeting and heard Shri Gurao's speech and that the leaflet 'Chetawani' was neither read nor distributed at the meeting. This witness has not been shown to be interested. Rameshchandra Rawat (R.W. 7) has also made a statement to the same effect. But he does not appear to be disinterested. He says, he did not know Shri Bagdi, but admits that a motor-truck of his had been given to him for use for two weeks during the election period. He also admits that Shri Bagdi put up at his house—though after the election.

30. As pointed out already, copies of the leaflet 'Chetawani' had been printed and delivered on the 2nd March, and in view of the large number of copies printed, the probability is that every effort must have been made to distribute the copies—particularly at large meetings and at important centres like Itarsi. M. N. Gurao has denied any knowledge of the leaflet, but his statement that he had never seen the leaflet till it was put to him in the witness-box is rather difficult to believe. But the evidence of the Petitioner's witnesses is not satisfactory. Hltvinod (P.W. 27) does not mention that the leaflet 'Chetawani' was read by Gurao at the meeting. Qaimal Hasan (P.W. 54) says that Gurao did not read it but merely referred to it and said that it had been already distributed and was known to the audience. Sheetal Prasad (P.W. 43) as well as Qayamul Hasan (P.W. 55) are interested in the P.S.P. as already stated. The only disinterested witness who has deposed that the leaflet 'Chetawani' was read by Gurao at meeting is, therefore, Govindsingh (P.W. 24). As against him, Babulal Pali (R.W. 3), who is a witness of good status and has not been shown to be interested, has deposed that he was present at the meeting and the leaflet 'Chetawani' was not read by Gurao.

31. There seems to be no doubt in view of the Petitioner's witnesses evidence that the leaflet 'Chetawani' was widely distributed in Itarsi town on the 3rd March 1957; but in view of the evidence on the record, as it stands, there is room for doubt as to whether it was actually read and given publicity by Gurao at the meeting. I, therefore, give benefit of doubt to Gurao in this respect and hold that it is not proved that Gurao read the leaflet 'Chetawani' at the meeting at Itarsi on the 3rd March 1957.

32. (c) In view of the above finding, it is not necessary to discuss in detail the evidence produced by the Petitioner about the circulation of the leaflet at other places; for the publication of the leaflet by the Respondent by itself would be sufficient to bring the case under section 100(1)(b) of the R.P. Act 1951 and make the election void, provided, of course the other requirements of section 123(4) are fulfilled and the publication of the leaflet is found to fall within the purview of that section. However, the evidence as regards the circulation of the leaflet on the 2nd and 3rd March 1957 at other places also may be briefly referred to, as it lends indirect support to the findings arrived at above about the distribution and reading of the leaflet by the Respondent at the meeting at Gadarpura on the 3rd March 1957.

33. The Petitioner has produced the following evidence with reference to the publication of the leaflet at other place in addition to those referred to above relating to its distribution at Gadarpura and Itarsi. Onkarprasad (P.W. 8) got a copy of the leaflet from Shri Mushran (Congress candidate for State Assembly from Golegaon constituency) at village Panhari on 2nd March and saw it being distributed there. He also saw its distribution at Kalyanpur on 3rd March by Babulal Jain, Arjunsingh (P.W. 35). Polling agent of Kishorilal Paliwal, Congress candidate for the State Assembly from the Gadarpura Constituency has deposed that he distributed copies of this leaflet at the village Hrapur and Bhatara a day before the election according to the instructions of Kishorilal. This evidence shows that the leaflet was being distributed at different villages on the 2nd and 3rd March 1957.

34. The next point for consideration is, whether the leaflet contained false statements of facts. The leaflet purports to be a 'Warning' (Chetawani) to voters by Shrimati Sucheta Kriplani. Shrimati Sucheta Kriplani was a prominent member of the Praja Socialist Party of which her husband Acharya Kriplani is the President. She, however, left the P.S.P. shortly before the last elections and joined the Congress. The Petitioner had stated in his petition that he had reason to believe that the leaflet had not been really signed or issued by Shrimati Sucheta Kriplani. Interrogatories were sent to Delhi for examination of this lady as a witness and her replies have fully borne out the Petitioner's belief. This lady has categorically denied having signed or authorised the leaflet or even made elsewhere any statements to the effect, as contained in the leaflet. The Respondent did not even care to cross-examine this witness. It is, therefore, perfectly clear that this leaflet was a pure forgery and the statements purporting to be made by Shrimati Sucheta Kriplani were never made by her and the advice or warning to the voters contained there, was never given by her. This was a fraud practised on the voters and seems to be a specimen of the lowest type of unscrupulous propaganda resorted to at the last election. It is, therefore, obvious that all the statements in the leaflet were false in as much as they were never made by Shrimati Sucheta Kriplani at all. It is significant that the Petitioner has not been able to trace the person who actually got the leaflet printed. It is unfortunate that the election law does not require the printer to obtain full and reliable details regarding the person getting such leaflets printed to enable his being traced and brought to book, in case the leaflet is found to be forged, or its publication found to be, otherwise, punishable under the law.

35. The next point for consideration is whether the statements in the leaflet 'Chetawani' were believed to be false or not believed to be true by the persons who distributed the leaflet. As the leaflet was never signed or authorised by Shrimati Sucheta Kriplani, the presumption is that the persons who published it could not have had any reason to believe the contents to be true. It is not the case of the Respondent also that he or his workers believed the statements to be true.

36. The next and the most important point in connection with this leaflet is, whether the false statements contained therein were 'in relations to the personal character or conduct, or candidature' of the Petitioner within the meaning of section 123(4) of the R.P. Act 1951. On behalf of the Respondent, it is urged that the statements relate only to the 'political character or conduct' of the Petitioner and not to his candidature at all. On behalf of the Petitioner on the other hand, it is urged that the statements do relate to the personal character, conduct and candidature of the Petitioner.

37. Before discussing the above point of law, it is necessary to see first what are the false statements therein relating to the Petitioner. A perusal of the leaflet will show that it contains the following statements about the Petitioner, viz.:

- (1) That the Petitioner has described Pt. Jawarharlal Nehru, the Emperor of the Heart of India as a 'Nakabil' Prime Minister.
- (2) That the Petitioner's opposition to Nehruji was harmful to the Nation and against the healthy traditions of the country.
- (3) That Shrimati Sucheta Kriplani had advised the voters on the above grounds not to vote for Kamath, the Petitioner.

38. As regards the first statement, it appears that the Petitioner made a speech at Ahmadabad on the 15th August 1956 (Independence Day). In the course of that speech, he made a reference to the speech of the Prime Minister Pt. Nehru from the Red Fort at Delhi on that morning and said that the Prime Minister, instead of congratulating the public on the auspicious occasion, has used threatening language and that if a Prime Minister used threatening language on such an occasion like this, he would not be considered fit for the position occupied by him. A copy of the 'Hitwad' (a Newspaper published at Nagpur) dated 17th August 1957, in which a short report of the Petitioner's speech was published was produced on behalf of the Respondent and put to the Petitioner in the course of his cross-examination (vide Ex.P-10 and P-11). According to this report what the Petitioner said in this connection was that he (Mr. Nehru) was unfit for holding the position of a Prime Minister if he continues to give threat to the people. The Petitioner has

deposed that this report was inaccurate and he has given his own version of what he said on the occasion as follows. His speech was in Hindi and the words used by him as given by him in his deposition were as follows:

"Aise subh avsar par, kisi bhi Praja tantrik desh men yadi wahan ka Pradhan Mantri Janta ko badhai dene ke bajaye dhamki deta hai to woh us pada ke yogya samjha nanhi jawega."

This may be translated as follows:

"On such an auspicious occasion, if the Prime Minister of any Democratic country instead of congratulating the people uses threatening language, he would not be considered fit for his post."

This version is somewhat different from the version given in the 'Hitvada'. But neither of these versions is tantamount to describing the Prime Minister to be (Nakabil' (=incompetent) in general terms. However, what was said by the Petitioner seems to have been conveniently distorted and given out as a positive statement made by the Petitioner to the effect that Pt. Nehru was a 'Nakabil' Prime Minister. The Petitioner has taken the word 'Nakabil' as equivalent to 'worthless'—which is perhaps a stronger word; but the learned counsel for the Respondent stated in the course of his argument that he was prepared to accept this translation. The Respondent stated in the witness-box that he had seen some report about the Petitioner's speech at Ahmedabad on 15th August 1956, but he had not read the report carefully and had formed no opinion. No attempt has been made to rebut the version given by the Petitioner in his deposition and taking that to be correct, it must be held that the positive statement in the leaflet that the Petitioner had described Pt. Nehru as 'Nakabil Prime Minister' was false and misleading. The Petitioner's statement was conditional and was to the effect that a Prime Minister who used threatening language on an auspicious occasion like the Independence day, would be considered to be unfit for his post in any democratic country. The Petitioner's objection was apparently to the language used by the Prime Minister on a particular occasion and nothing more; but it was conveniently distorted into a general statement in the forged leaflet. A statement as to what the Petitioner said on a particular occasion was clearly one of fact and the statement as given in the leaflet was, therefore, a false statement of fact in relation to the Petitioner. It is also a false statement of fact that Shrimati Sucheta Kriplani had attributed this statement to the Petitioner.

39. The next statement in the leaflet was that 'opposition of Kamath to Nehruji was harmful to the nation and against its healthy traditions of the country'. On behalf of the Respondent, it was urged that this was a statement of opinion and not one of fact. This argument might have had force if the document was really signed or authorised by Shrimati Sucheta Kriplani. But the document gives that as the opinion of Sucheta Kriplani and in this aspect it is a false statement of fact, for this was not the opinion of Shrimati Sucheta Kriplani.

40. Lastly, the statement in the leaflet to the effect that Shrimati Sucheta Kriplani had advised and warned the voters against voting for the Petitioner was also false.

41. It will thus appear that all the statements in the leaflet, purporting as they do, to be statements of Shrimati Sucheta Kriplani about the Petitioner are false statements of facts and would, therefore, fall within the purview of section 123(4) of the R.P. Act 1951.

42. The next point is whether the aforesaid statements relate to the 'personal character, conduct or candidature' of the Petitioner. The learned counsel for the Respondent urged that the above statements relate to the political and not personal character or conduct of the Petitioner. The learned counsel for the Petitioner on the other hand relied on the 'North Lath' case (6 O'M & H.p. 1032) and contended that a statement may relate to the political as well as personal character of a candidate, as laid down in that case, and that this case lays down sound law and should be followed in preference to the rule laid down in 'Cockemouth' case (5 O'M & H. p.159), which has been followed by Election Tribunals in certain cases (e.g. by the Lahore Election Tribunal in the Gurdaspur North Sikh Constituency case and the Bengal Tribunal in the Birbhum ... Rural Constituency case. (See Indian Election cases by Sen and Poddar (1935-1951) p. 330 & 234). The rule

laid down in the 'North Louth' case has been followed by the Election Tribunal, Tanjore in 9 E.L.R. 242, in which it was remarked (see page 263) that—

"There is, indeed, no sharp dividing line, separating what is personal from what is political. A statement may very well involve both the positions and if it affects the veracity and honour of the candidate as well as his political character, then it is within the mischief of the Act."

In the case the statement in question was to the effect that the 'petitioner having received bribes from the Kalki Goshti (Group) had brought a no confidence motion against Shri Kamraj (the leader of the Tamilnad Congress).' Now, the bringing of the 'no confidence' motion was obviously 'political' conduct; but as the motion was brought dishonestly, owing to Bribery, it was held to fall within the mischief of section 123(4) (which correspondence to the old section 123(5), before the amendment of the Act in 1956) R.P. Act 1951. I am in respectful agreement with this view.

43 The question whether a particular statement is in relation merely to the public or political character of a candidate or with respect to his personal character has to be decided on the facts and circumstances of each. It was pointed out in the 'North Louth' case, that the meaning of the statement has to be ascertained by the Court, after considering the occasion of the publication, the person publishing, the person attached and the readers intended to be addressed! In the North Louth case, Mr. Healy, who was a Member of the Official Irish Party, was accused of 'place Hunting', of 'seeking clandestine Government favours under cloak of his Parliamentary position and by trafficking in its opportunities—which was against the principles of that Party'. It was pointed out that the readers or persons to whom the publications would be read were many of them ignorant men—788 illiterates—who might be likely to attach importance to the long list of relations of Mr. Healy, who were stated in the leaflet to have been given lucrative positions through his influence. It was remarked—

"that the leaflet, in the conditions in which it would be read by those who got it, would be taken as meaning that Mr. Healy, untrue to his Nationalist duty and profession, had obtained Government appointments for his family,"

"So construed, the documents contained false statements of fact in relation to the personal character and conduct of Mr. Healy, his honour, rectitude, patriotism. The imputation on him is not on his political action but on his dishonourably and unworthily obtaining Government posts for his relations under cover and by virtue of his seat in Parliament or otherwise."

44. It was further remarked that—

"A politician for his public conduct may be criticised, held up to obloquy; for which the statute gives no redress; but when the man "beneath the politician has his honour, veracity, and purity assailed, he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations."

45. I have quoted the portions in inverted commas from the typed copy of the relevant portions of the Judgment in the North Louth case which was produced by the learned counsel for the petitioner and has been placed on the record in the miscellaneous file, for ready reference. The above remarks are from the Judgment of Mr. Justice Gibson. Mr. Justice Maddon has also emphasised the same point of view in his judgment in the same case. The important question in such cases is the meaning to be given to the statement in question in the particular circumstances of the case. "The question", he remarked, "is really one of commonsense and depends on an answer to the query, "What meaning would be attributed to the document in question by the persons to whom it is addressed?"

46. In 'Sunderland's case (6 O'M & H, p. 52), a similar view was taken by Mr. Baron Pollock, who pointed out while discussing the wording of the English statute (—which is similar to that of section 123(4) R.P. Act) that the question of 'malice' does not arise as in civil actions for libel and that any statement of fact in relation to the personal character and conduct of the candidate whether charging dishonesty or merely bringing a man into contempt would come within the statement. He pointed out further that even apparently innocent statements about a

candidate, if false would fall within the statute, in the circumstances of a particular case. He gave two illustrations to show this—'Supposing any gentleman in a country constituency was to say of his adversary that he had shot a fox and he said it for the purpose of a working upon the minds of the constituency during the election, that would certainly come within the meaning of the Act.' Apparently to shoot a fox was considered to be improper or dishonourable conduct for a gentleman in the locality.

'Again, if any person in a constituency where one of the Members was a temperance man, were to say that he had seen him drinking a glass of sherry—a perfectly innocent act—that would also bring him within the Act.'

In other words, the true meaning of the statement as conveyed to the voters has to be ascertained with reference to all the surrounding circumstances as stated above i.e. the occasion of the publication, the person publishing, the person attacked, the readers intended to be addressed and so forth.

47. Bearing the above principles in mind, we have not to ascertain the meaning of the false statements in the leaflet, which was likely to be conveyed to the voters. It is well-known that in spite of the introduction of Parliamentary Democracy in India, the large mass of voters, especially in rural areas are illiterate and are not in a position to understand party politics or party propagandas. They can understand only personalities and will be inclined to vote for a candidate whom they hold in esteem or who is a follower of an esteemed leader. Leaflet in elections in India are issued by persons who are well-acquainted with this situation and who, therefore, exploit the names of great leaders like Pt. Nehru to work upon the minds of the voters to catch votes. In the present instance, it may appear at first sight that the statements made in the leaflet were in relation to the Petitioner as a Politician and not as a private individual—but the real significance of the statements lies in the fact that they were alleged to have been made against Pt. Nehru. Voters are warned not to vote for Kamath, why? Because he had described Pt. Nehru as a 'Nakabil' Prime Minister! It is further said that his opposition to Pt. Nehru was harmful to the nation and against its healthy tradition. Pt. Nehru is described as 'Emperor of the Heart of India' and the statements attributed to the Petitioner are evidently intended to convey to the voters that any one opposing such a high personage must be acting from some dishonest or dishonourable motive.

48. In the present instance, this is not merely an inference to be drawn from surrounding circumstances, according to the principles laid down in the 'North Louth' case, but there is important positive evidence available to support it. Reference has been already made above to a footnote by Ramrao Waghude in a leaflet (Ex. P-8), which purports to be an 'open letter to the Petitioner by Chaudhari Nitiraj Singh' and which was produced on behalf of the Respondent himself and put to the Petitioner in cross-examination. In this foot-note, the publication of the leaflet 'Chetawani' was foreshadowed, as pointed out above, and the intention with which the leaflet was to be published is clear from the following words in the foot-note:—

"Nagrik Bandhoo, Chaudhari Nitirajji ia patra apne parha. Ab, apke samaksh Shrimati Sucheta Kripalani ka patra prakashnarth ayega jismen unhone hriday samrat Pandit Jawaharlal Nehru ke khilaf rashtra ke liye ghatik virodh karne wale Kamathji ka chitra khincha hai, take janata pahichan sake ki ye Prajasamajwadi umedwar kitne bhrasht evam makkar hai atah janta se nivedan hai kee apna kimti vote soch samajhkar de."

The above may be translated as follows:—

"Citizen-brothers—You have read the letter of Ch. Nitiraj Singh. Now a letter of Shrimati Sucheta Kripalani will come before you for publicity, in which she has painted a picture of Kamathji, who has opposed Pt. Jawaharlal, Emperor of the heart (of India) in a manner harmful to the Nation. The public will be able to see from it to what extent this Praja Samaj candidate is depraved (bhrasht) and deceitful (makkar). I have taken the meanings of the words 'Bhrasht' and 'Makkar' from Bhargav's standard Anglo-Hindi Dictionary (7th edn. published in 1946). The primary meaning of the word 'Bhrasht' is 'fallen', 'depraved'. 'Makkar' means 'deceitful', 'crafty', 'cunning'. Both these words thus imply reflexion on moral character.

49. It is thus clear from the above footnote in Ex. P-8, that the statements given in the leaflet were intended to show to the public how depraved and deceitful the Petitioner was. This is evidently the meaning, which the publishers of the leaflet intended and expected the statements to convey to the mind of the voters. The document 'Chetawani' was a forgery as it was never signed or authorised by Shrimati Sucheta Kriplani. The statements embodied therein were, therefore, evidently invented by the publishers of the leaflet with the object which they had in view.

50. In view of the above evidence and the other circumstances referred to above, there seems to be no doubt that the statements against the Petitioner in the leaflet were intended to convey and were likely to convey to the large mass of illiterate voters the impression that the Petitioner was a morally depraved and deceitful person. For, according to their ideas, no person who called Pt. Nehru, who was so popular as to be described as the Emperor of the Heart of India, as 'Nakabil Prime Minister', and who opposed him, could be acting with any honest or honourable motive.

51. There is another aspect of the statements in this leaflet which would also bring them within the purview of section 123(4). The leaflet purported to convey a 'warning' to the voters by Shrimati Sucheta Kriplani, not to vote for Kamath. Now, as Shrimati Sucheta Kriplani never signed or authorised the leaflet, it is clear that the statement that the leaflet was a warning by Shrimati Sucheta Kriplani as shown by her signature at the bottom was, false. Similarly, the other statements about the Petitioner embodied in the leaflet and attributed to Shrimati Sucheta Kriplani were never made by her and the allegation conveyed by the forged signature that they were so made, was equally false. The leaflet in so far as it conveyed a warning of Shrimati Sucheta Kriplani to the public not to vote for Kamath, meant that she considered him unfit to be elected as a candidate for the Parliament. This lady had given active support to the Petitioner at the time of the bye-election of 1955 in this very constituency, when the Petitioner was successful. This leaflet was, therefore, intended to convey that Shri Kamath had completely fallen in the estimation of Shrimati Kriplani in two years. The word 'character' includes a person's reputation according to its dictionary meaning. According to sections 52—55 of the Indian Evidence Act also, 'character' includes reputation. Now, fitness for being a member of the Parliament includes not only political ability, but also other virtues, like integrity, self-sacrifice, patriotism, which may be said to be a part of a man's character. The leaflet in so far as it represented that Shrimati Sucheta Kriplani considered the Petitioner unfit to be elected, was thus a reflection on the personal character also of the Petitioner.

52. I accordingly hold that the statements in the leaflet are in relation to personal character and conduct of the Petitioner within the meaning of section 123(4) R.P. Act 1951.

53. Shrimati Sucheta Kriplani is one of the top-most political leaders, as admitted by the Respondent in his deposition. Her name seems to have been exploited by the unscrupulous publishers of the leaflet with the same object as that of Pt. Nehru. A warning to the voters not to vote for Kamath purporting to come from a leader of the standing and prestige of Shrimati Sucheta Kriplani was bound to prejudice the Petitioner's prospects of election and this fact was admitted even by the Respondent in his deposition.

54. All the requirements of section 123(4) of R.P. Act 1951 are, in my opinion, thus proved to have been fulfilled. I, accordingly, hold that the Respondent was guilty of a 'corrupt practice' under that section, owing to the publication of 'Chetawani'.

55. As the corrupt practice was committed by the Respondent himself his election is liable to be declared void under section 100 (1)(b) of the R.P. Act 1951.

56. I decide all the issues in favour of the Petitioner and declare that the Respondent's election is void under section 100(1)(b) of the R. P. Act 1951.

57. *Issues No. 2(1) to 2(5)—Paragraph 7(b) of the petition.*—The next set of issues No. 2(1) to 2(5) arises out of the allegations in Paragraph 7(b) of the petition and relates to the publication of another leaflet with the heading 'Savdhan' (Attention). According to the Petitioner's averments, this leaflet contains false statements of facts, in relation to the personal character, conduct and candidature of the Petitioner and it was circulated by the Respondent and his agents and workers between the 23rd February 1957 and 4th March 1957.

The Petitioner alleges that the Respondent and the other persons who published the leaflet believed the statements therein to be false or did not believe them to be true and that they were reasonably calculated to prejudice the prospects of the election of the Petitioner.

58. The leaflet 'Savdhan' (Ex. P 2) may be translated as follows:—

ATTENTION

Voter-friends,

In view of the firm footing obtained by the Congress Party, the ground under the feet of the Praja Socialist Party is slipping and they are now resorting to false propaganda to mislead the public and put them on a wrong track. It is quite clear from their present pamphlet-propaganda, to what extent, they are prepared to go in making false statements. The public has now become quite familiar with this.

For instance, they have relied on the work of the 'Janapada'; but all this work has been achieved with the help from the Development Department through which Congress Government has given them substantial grants.

The cowardice of the 'Hut-symbol' Party is apparent from their individual propaganda against Shri Mushran and the fact that they are announcing publication of leaflets till the last day—so that there may be no time left for any reply.

We do not wish to say anything more than this that the workers of the 'Hut-Symbol' Party have been so foolish as to threaten to shoot even Pandit Jawaharlal Nehru, the great leader of the country.

The fact is that the Praja Socialist Party is at present a reactionary party, which is stabbing the country in the back.

The Praja Socialist Party, by coming to an understanding with the Muslim League is following exactly in the footsteps of Mir Jafar, Jaichand and Mohammad Ali Jinnah and making common cause with Pakistanis. To vote for such a party is to sell the country and nothing but treason.

To vote for the Praja Socialist means supporting Pakistanis.

Hence I appeal to you to consider carefully and then decide, who deserves your vote for the sake of the good of the country.

Gotegaon,

Symbol of pair

SHYAMLAL JAISWAL

23-2-1957

of bullocks.

59. It will appear from the above that the leaflet contains many defamatory statements against the Praja Socialist Party, but there is no statement therein against the Petitioner personally. Some of the statements are merely matters of opinion and not statements of fact, e.g. that the Praja Socialist Party is a reactionary Party, that it is loosing ground, that it is following in the footsteps of Mir Jafar, etc. But there are a few statements of fact also e.g. that the workers of the Party are threatening to shoot Pt. Jawaharlal Nehru, that the Party has come to an understanding with the Muslim League, etc. The Petitioner's case is that these statements of fact are false and the Respondent is guilty of a 'corrupt practice' falling within the scope of section 123(4) of the R. P. Act, 1951 and his election is void under section 100(1) (b) of that Act.

60. The law on the subject has been already referred to, while discussing the Issues relating to the leaflet 'Chetawani'. In the present case there is no evidence to show that the leaflet 'Savdhan' was published by the Respondent himself or his election agent. Both of them have denied that they had any knowledge of this leaflet or its circulation during the election period. A number of persons have been named in paragraph 7(b) of the petition (as amended) as the agents and workers of the Respondent who published the leaflet 'Savdhan'; but the Respondent has denied that any of these persons was his agent—except M. N. Gurao, his election agent. He has deposed that he had brought some persons from Nagpur—to (to which place he belongs) to work for him during the election and that he did not engage any local persons as his agents for election work.

61. Gulabsingh (P.W. 6), Proprietor of the Bharat Printing Press at Gadarwara, has deposed that the leaflet 'Savdhan' was printed by him on an order given by one Ramgopal. He does not know Ramgopal. He says that 500 copies were printed on 23rd February, 1957 and delivered to Ramgopal. Narmada Prasad Kettle (P.W. 33) and Gourishankar (P.W. 29) have identified the handwriting and signature of Shyamlal Jaiswal on the manuscript of the leaflet, which was handed over to Gulabsingh (P.W. 6) by Ramgopal. Both of them have deposed that Shyamlal Jaiswal was a member of the Congress Party and was also a member of the District Congress Committee of Narsimhapur.

62. The Petitioner has also produced a number of witnesses who have deposed to the circulation of copies of the leaflet 'Savdhan' at different places on 24th February or later dates upto 4th March, 1957 e.g. Onkarprasad (P.W. 8), Hosiery merchant of Narsimhapur; Devicharan (P.W. 9), Member Municipal Committee, Narsimhapur;; Chaudhary Girirajsingh, Chairman, P.W.D. Standing Committee, Janapada Sabha, Narsimhapur (P.W. 10); Mahendrasingh Killedar (P.W. 28), Chairman, Education Committee, Janapada Sabha and P.S.P. candidate for the State Assembly from Narsimhapur Constituency at the last election and Manakchand (P.W. 47), grain merchant of Narsimhapur have deposed to the distribution of the leaflet at Narsimhapur on 24th February 1957. Jiwandas (P.W. 5) and Narmada Prasad, President, Municipal Committee, Gotegaon, have deposed to its distribution at Gotegaon on the same date. Vishwanathsingh (P.W. 11), a big landowner of Singhpur and Harprasad (P.W. 14) of that village have deposed to its distribution at Singhpur. Arjunsingh (P.W. 35), Polling agent of Kishorilal Paliwal, Congress candidate for Gadarwara constituency, distributed copies of 'Savdhan' in the village Hirapur and Bhatera on 3rd March, 1957. Khumansingh (P.W. 45), who used to be a member of the Congress and was for some time, President of the District Congress Committee has deposed that two persons named—Jagannath Pande and Pooran brought a number of copies to him at village Amgaon on 24th February 1957 for distribution, but he refused to distribute them as he considered the contents of the leaflet objectionable. The Respondent has made no attempt to rebut the above evidence. Although some of the witnesses belong to the P.S.P., I see no good reason to doubt the uncontroverted testimony of these witnesses about the distribution of this leaflet, viz., that the leaflet was widely distributed on the 24th February or later dates before 4th March, the last election date in the constituency. The 'defamatory' statements in the leaflet against the Praja Socialist Party were obviously calculated to prejudice the prospects of election of the candidates representing that Party and some of the witnesses named above have deposed that the leaflet had actually such effect on the voters who received and read copies of the leaflet (e.g. P.W. 8, P.W. 10, P.W. 14 and P.W. 47). But the evidence does not show that the copies of the leaflet were circulated by the Respondent or any of the persons, who were admittedly,—or proved by any reliable evidence to be—agents or workers of Respondent. In view of the admission of the contents of paragraph 4 of the petition by the Respondent in his written-statement, to which reference has been already made, however, the Congress candidates for the State Assembly may be looked upon as 'agents' of the Respondent according to law. There is some evidence to prove the publication of the leaflet by such candidates. Girirajsingh (P.W. 10) has deposed that Shri S. N. Mushran (Congress candidate for State Assembly from Gotegaon Constituency) and Shrimati Sarla Devi Pathak (Congress candidate for the State Assembly from the Narsimhapur constituency) were present when copies of 'Savdhan' were being distributed in the Bazar at Narsimhapur on 24th February 57. Vishwanathsingh (P.W. 11), has deposed that the leaflet 'Savdhan' was read and distributed in the Bazar at Singhpur on 24th February by Kishorilal Paliwal—who was a Congress candidate for the State Assembly from Gadarwara constituency. Arjunsingh (P.W. 35), who was Polling Agent of Shri Kishorilal Paliwal has stated that he distributed copies of 'Savdhan' in the villages Hirapur and Bhatera a day before the election on behalf of Shri Kishorilal Paliwal. According to the law of Agency, an agent can appoint a sub-agent, for performance of his duties, in the absence of any express or implied contract to perform them personally. Distribution of leaflet was not a duty to be performed necessarily by the agent himself and hence Arjunsingh could be appointed by Kishorilal to perform it and the principal would be bound by the act of Arjunsingh as sub-agent of Shri Kishorilal. In view of the above evidence and the admission by Respondent of paragraph 4 of the petition, it may be taken to be proved that the leaflet 'Savdhan' was distributed by Shri Kishorilal Paliwal, Shri S. N. Mushran and Shrimati Sarla Devi Pathak as 'agents' of the Respondent according to law. But here again, there is no evidence to show that Shri Mushran, Shri Kishorilal and Shrimati Sarla Devi were acting in this matter with consent of the Respondent—as required by section 100—(1) (b) of the R. P. Act. That section requires consent of the candidate to be proved to the commission of the corrupt practice in the case of 'any person' and 'any person' would

seem to include an 'agent' also. Consequently, in spite of the above evidence produced by the Petitioner, the election of the Respondent cannot be held to be void under section 100(1) (b) of the Act.

63. The election of the Respondent could be declared to be void on the basis of the above evidence under section 100(1) (d) (ii) only, if the result of the election is proved to have been materially affected by the distribution of the leaflet 'Savdhan'. But there is no evidence on the record to support such a finding. The burden of proof lay on the Petitioner to prove affirmatively that but for the distribution of the leaflet 'Savdhan' the number of votes cast in favour of the Petitioner would have exceeded those in favour of the Respondent and he would have been elected instead of the Respondent (*vide* X. E. L. R. 30 & 481 at page 477). There is no evidence on the record to establish such a result. We have nothing on the record beyond the vague statements of a few witnesses (referred to above) that some voters who read the leaflet 'Savdhan' were prejudiced thereby against the Praja Socialist Party. But such vague evidence is of little value. This leaflet was being circulated from 24th February 1957 and there was, therefore, ample time for its contradiction by the Praja Socialist Party till the 4th March 1957, which was the last polling date in the Parliamentary constituency of Hoshangabad. The workers of the Praja Socialist Party must have tried to counteract the effect of the leaflet by contradicting the defamatory allegations in the leaflet (*see* evidence of P.W. 30). Lastly, it has to be remarked that the number of votes secured by the Respondent in the present instance exceeded those obtained by the Petitioner by over 25000. Taking all these facts into consideration, I have no hesitation in holding that the Petitioner has entirely failed to prove that the result of the election was materially affected by the distribution of this leaflet.

64. There is another requirement of section 123(4) R. P. Act 1951, owing to which also, the Petitioner's case in respect of this leaflet must, in my opinion, fail. According to section 123(4), the 'false statement' in question must be in relation to the 'personal character, conduct or candidature' of the candidate concerned. As pointed out already, there is no statement in the leaflet 'Savdhan' against the personal character or conduct of the Petitioner and this fact is not disputed by the learned counsel for the Petitioner. But it is urged by him, that the defamatory statements in the leaflet against the Praja Socialist Party should be taken to be in relation to the 'candidature' of the Praja Socialist Party's candidate, as the said statements are bound to affect the prospects of his election as a candidate representing that Party. The learned counsel was not able to cite any authority in point in support of this argument. The word 'candidature' has not been defined in the R. P. Act 1951, but the word 'candidate' is defined in section 79 and this definition will show what the term 'candidate' as under in the Act means. According to section 79, 'candidate' means a person, who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate. The word 'candidature', according to the Oxford English Dictionary (1933) means 'standing as a candidate' or 'candidateship'. The later word, according to the same dictionary means 'the position of a candidate'. It would, therefore, appear that in view of the definition of a candidate as given in section 79 of the R. P. Act 1951, 'candidature' would mean the 'standing as a candidate' or 'position of a person who has been or claims to have been nominated as a candidate'. According to the second part of the definition, this status would have retrospective effect from the time when the person began to hold himself out as a candidate—with the election in prospect. The first part of the definition of a 'candidate' has reference to the qualifications of a person for being nominated as a candidate in a Constituency and the second part confers on him this status with effect from the time he holds himself out as a candidate with the election in prospect. These are the only matters which would appear to be included in the connotation of the term 'candidature'. This definition has, therefore, nothing to do with the status of a person as a representative of any party or the prospect of his election. This view receives support from the decision of the Election Tribunal, Poona (1953), reported as 7 E.L.R. 100. In that case it was held (*see* page 117) [following *Shiv Karansingh Vs. Sahibsingh* (1 Doabia 297 at p. 304)] that the word 'candidature' as used in section 123(5) [see 123(4) after the amendment of 1956] of the R.P. Act 1951, means "the bundle of rights and qualifications which entitled to a person to stand as a candidate in a particular constituency as well as the factum of his being a candidate." The juxta-position of the words 'in relation to candidature, withdrawal or retirement from contest also suggests that the word 'candidature' as used in section 123(4) has reference only to the legal status of a person as a candidate and nothing more. It is also noteworthy, that

the question of the prospects of a candidate being prejudiced is separately provided for in the concluding portion of section 123(4) of the R. P. Act. The learned counsel for the Petitioner was unable to cite any authority even under English Law to support his contention that any false statements about a Party should be taken as a false statement in relation to the 'candidature' of the person representing that Party. I do not consider the interpretation sought to be put on the word 'candidature' by the learned counsel for the Petitioner to be sound and am unable to accept it.

65. In view of the evidence and law discussed above, I decide issue No. 2(2) in favour of the Petitioner but decide Issue 2(2) against the Petitioner. In view of this finding on Issue No. 2(2), no finding is necessary on Issue No. 2(4). As regards Issue No. 2(3), I find that the leaflet does not contain any false statements 'in relation to the personal character, conduct or candidature of the Petitioner' within the meaning of section 123(4) of the R.P. Act 1951, though the false statements in the leaflet were otherwise reasonably calculated to prejudice the prospects of the Petitioner's election.

66. In view of the above findings, I hold that no 'corrupt practice' as alleged in para. 7(b) of the petition is proved.

67. Issues No. 3(1) to 3(4), 4(1) to 4(3), 5(1) to 5(3), 6(1) to 6(6), 7(1) to 7(4).—I now take up the issues relating to certain false and defamatory statements alleged to have been made by the Respondent in the course of his election campaign which were calculated to prejudice the Petitioner's prospects of election. These statements fall into two categories. The first category comprises statements to the effect that the Petitioner was getting financial aid in the shape of lakhs of dollars from America for discrediting Pt. Nehru and his Government, etc. Issues No. 3(1) to 3(4), 6(1) to 6(6) and 7(1) to 7(4) relate to statements of this type. The other category consists of statements amounting to personal threats to the Petitioner. Issues No. 4(1) to 4(3) and 5(1) to 5(3) relate to this category.

68. Issues No. 4(1) to 4(3).—*Paragraph 7(d) of the petition.*—Issues relating to the second category can be easily disposed of and I shall first deal with them. Issues No. 4(1) to 4(3) relate to a statement alleged to have been made by the Respondent in Hindi at a meeting at the village Bankhedi on the 23rd February 1957, which was to the following effect: 'What do Kamath and Niranjansingh think of themselves? If they come before me, I shall shoot them'. The Respondent has admitted that he made a speech at a meeting at Bankhedi on the 23rd February 1957, but denied that he used the threatening words against Shri Kamath or Niranjansingh as alleged in para. 7(d) of the petition. Only two witnesses were produced by the Petitioner in support of this allegation. Roopchand Rai (P.W. 24) is the President of the Municipal Committee, Chhindwara and is a social worker. He does not belong to any Party. He was supporting an independent candidate named Shri Pande at the last general election. In the course of his tour in that connection, he visited the village Bankhedi on the 23rd February 1957 and was present at the Congress meeting held there at night, which was addressed by the Respondent, Shri Bagdi. He stated that Shri Bagdi appeared to be in an angry mood and in the course of his speech made the above-mentioned threatening remark. But it appears from his evidence that the remark was made in the context of any disturbance at the meeting at the instance of the P.S.P. According to him, what the Respondent said was '*Hamne Niranjansingh ko thik kar diya hai. Yadi yahan ko gadbadi karenge to shoot karenge*'. This may be freely translated as follows: "We have taught Niranjansingh a lesson. If any person creates any disturbance here, I shall shoot him." The cross-examination of the witness shows that the remark was directed to Kamath and Niranjansingh only for he says that what the Respondent said was that if Kamath and Niranjansingh created any disturbances they would be shot down. It seems from the evidence of the witness, that the Respondent was in an angry mood—perhaps—owing to some disturbance created at his meeting elsewhere—and hence he threatened that if any disturbance was created by Kamath and Niranjansingh he would shoot them. It is not alleged that Kamath and Niranjansingh were present at the meeting, but the remark was probably directed in the circumstances against their partisans and intended to prevent them from creating any disturbance. Roopchand Rai met the Petitioner the next day at Piparia and told him about Shri Bagdi's speech at Bankhedi and inquired from him there had been any dispute between him and Shri Bagdi. But the Petitioner told him that there had been none and said that speeches of this kind were common in election ('*aise bhashan hote he rahte hain*'). Evidently, he did not attach importance to the matter at the time. The second witness as regards the meeting, viz., Damodarprasad alias Dammu Ustad (P.W. 52) is a vegetable seller at Bankhedi. He was present at the meeting addressed by Shri Bagdi. He deposes

that Shri Bagdi said that he would shoot Shri Kamath and Niranjansingh, but, he cannot give the context in which these words were used or indeed give any other parts of Shri Bagdi's speech. He has further stated that Shri Bagdi also said that he would perform the 13th day *Shradh* ceremony of Kamath and Niranjansingh. This is not alleged even in the petition, in respect of Shri Bagdi's speech at Bankhedi. Nor has Roopchand Rai deposed to any such statement having been made by Shri Bagdi at that meeting. The evidence of this witness, therefore, does not appear to be trustworthy. The Respondent has produced one witness, viz., Govindas (R.W. 2) in connection with this meeting. He is a big landowner from Bankhedi. He has stated that his family owns about 2,000 acres of land and that his individual share in it is about 700 acres. He states that he was present at the Congress meeting at Bankhedi on the 23rd February 1957 which was addressed by the Respondent and that Respondent did not say in the course of his speech that he would shoot Kamath and Niranjansingh, if they came before him, as alleged in the petition. He states that Shri Bagdi only spoke about the Five Year Plan and the achievements of the Congress. From the cross-examination, it appears that Premchand Azad, who has been assisting Respondent's counsel in Court in these proceedings was with him when he came to the Court in a rikshaw.

69. Roopchand Rai appears to be a respectable witness and his evidence seems to be straight-forward; but even taking it as its face value it merely shows that the Respondent's threat was conditional and directed against partisans of Shri Kamath and Niranjansingh, if they attempted to create any disturbance. Such a threat cannot be said to have any reference to voting and would not, therefore, amount to a 'corrupt practice' within the scope of section 123(2) of the R.P. Act 1951.

70. As Shri Bagdi has admitted that he addressed a meeting at Bankhedi on 23rd February 1957, I decide Issue 4(1) in favour of the Petitioner; but for reasons given above, I decide Issue No. 4(2) and 4, (3) against the Petitioner and hold that no corrupt practice as alleged in paragraph 7(d) of the petition is proved.

71. *Issues No. 5(1) to 5(3)—Paragraph 7(e) of the petition.*—Threatening words of a similar character are alleged to have been made by the Respondent in his speech at a meeting at Gadawara on the 3rd March 1957. The speech was in Hindi and the Respondent is alleged to have used words to the following effect:—

"Whether I win or lose, I shall see that Niranjansingh and Kamath are buried deep in the valley of the Narmada river and I shall go only after performing the 13th day *Shradh* ceremony."

72. The Respondent admitted that he addressed a meeting at Gadawara on the 3rd of March 1957 as alleged, but denies that he used any words of the kind given above. In his deposition he said that he did not make any such reference to Shri Kamath or Niranjansingh.

73. The following witnesses for the Petitioner who have deposed that they were present at the Gadawara meeting on the 3rd March and that Shri Bagdi did use the threatening words given above, viz., Devicharan (P.W. 9), Giriraj-singh, (P.W. 10), Chhotelal (P.W. 19), Gourishankar (P.W. 29) and Babulal Tandon (P.W. 30). These witnesses, however, do not say in what context or for what reason the above words were used. The opening words 'Whether I win or lose' show that the words were not used as a threat to voters in case they voted against him. As is well known, the 13th *Shradh* ceremony is to be performed by the relatives of a Hindu after his death and the Respondent being a stranger, was obviously not a person who was concerned with the *Shradh* ceremony of Kamath or Niranjansingh. Hindus are, moreover, cremated and not buried in rivers. The language alleged to be used, therefore, seems to be figurative and not intended to be taken in a literal sense. Probably, the speaker did not mean to convey anything more than that he was determined to see that Kamath and Niranjansingh lost all their influences and become extinct politically. Even taking the evidence of these witnesses as it stands, I am therefore of the view that the language used cannot be reasonably construed as a threat to murder the Petitioner or to deter him from contesting the election or to the voters to prevent them from voting for him.

74. The Respondent has produced two witnesses in rebuttal in respect of his speech at the Gadawara meeting on the 3rd March, viz., Sukhraj (R.W. 4) and Harprasad Patel (R.W. 5). The evidence of these witnesses has been already discussed in connection with the publication of the leaflet 'Chetawani' at the same meeting at Gadawara on 3rd March 1957 and has been found to be not trustworthy.

75. Out of the witnesses for the Petitioner on the other hand, Devicharan (P.W. 9) and Chhotelal (P.W. 19) do not appear to be in any way interested. The words attributed to the Respondent also do not appear to be likely to be a mere invention of the Petitioner or his witnesses. I am, therefore, inclined to believe the Petitioner's evidence in preference to that of the Respondent; but I am of opinion that the words alleged to have been used were capable of a different interpretation and were not intended to be taken literally as a threat of physical violence to the Petitioner.

76. As the Respondent has admitted that he addressed a meeting at Gadarwara on 3rd March 1957 as alleged in para. 7(2) of the petition, I decide issue No. 5(1) in favour of the Petitioner. As regards Issue No. 5(2), I find that language to the effect given in para. 7(e) of the petition was used by the Respondent and find that issue also in favour of the Petitioner. But, I am of opinion that the language was capable of a different interpretation and did not constitute any threat of injury falling within the scope of section 123(2) of the R.P. Act 1951. I, therefore, find Issue No. 5(3) against the Petitioner and hold that no 'corrupt practice' as alleged in paragraph 7(e) of the petition has been proved.

77. Issues No. 3(1) to 3(4), 6(1) to 6(6) and 7(1) to 7(4)—Paragraphs 7(c), 7(f) and 9 of the petition.—I come next to issues No. 3(1) to 3(4), 6(1) to 6(6) and 7(1) and 7(4) which refer to the Petitioner's allegations that the Respondent made speeches at the meetings at Narsimhapur and Gadarwara on the 19th February and 3rd March 1957 and at Itarsi on 1st March 1957 and made statements in the course of these speeches to the effect that the Petitioner Shri Kamath was receiving lakhs of Dollars from America to discredit Pt. Nehru and his Government, that he always praised American Policy and was praised in American papers and so forth, as detailed in paragraphs 7(c) and 7(f) of the petition. In paragraph 9 of the petition, it is alleged that Shrimati Indira Gandhi, daughter of Pt. Jawaharlal Nehru, had made a statement while addressing public meetings at Allahabad on the 23rd January 1957 and 4th February 1957 to the effect that the P.S.P. (i.e., Praja Socialist Party) gets 'foreign financial aid'. It is stated in the paragraph, that these speeches were published in two newspapers of Delhi, viz., the 'Hindustan Standard', dated 24th January 1957 and the 'Hindustan Times' dated 5th February 1957, of which cuttings marked as 'C' and 'D' were annexed to the petition. It is further alleged in paragraph 9 of the petition that these speeches of Shrimati Indira Gandhi were prominently published in all newspapers in India, including those in Madhya Pradesh and were utilised by the Respondent and his workers in their speeches so as to convey that the Petitioner himself was getting foreign aid in the same manner and that these statements were calculated to prejudice the prospects of his election and had materially affected the result of the election.

78. The details of the speeches made by the Respondent, his agents and his workers in this connection were not stated in the original paragraph, and hence the paragraph was held to be defective for want of necessary particulars, required by section 83 of the R.P. Act 1951. The Petitioner subsequently applied for permission to amend this paragraph (along with certain others) and particulars were given in the amended petition. It was stated in the amended petition that the Respondent and his agents and workers named in the amended paragraph had utilised the speeches of Shrimati Indira Gandhi, in the manner stated above at the places and during the periods mentioned below:—

<i>Name</i>	<i>Place or places</i>	<i>Time</i>
Respondent	Several villages in the Goteagaon constituency.	3rd week of February 1957.
M. N. Gu Rao.	Itarsi constituency	2nd week of February 1957.
S. N. Mushran	Goteagaon constituency	3rd week of February 1957.
Sarla Devi Pathak	Narsimhapur constituency.	-do-
Kishorilal Paliwal	Gadarwara constituency	-do-
Narainsingh Jalwar	Sohagpur constituency	-do-
Babulal Jain	Chichli in Gadarwara Tahsil.	On or about the 15th February 1957.

79. Issues were accordingly framed with respect to the above speeches—*vide* Issues 7(1) to 7(4); but no evidence was produced with respect to any such speeches, except those referred to in paragraphs 7(c) and 7(f) of the petition. However, the allegations in paragraph 9 of the petition and annexures to the petition marked C and D appear to furnish the background of the statements in the speeches at Narsimhapur, Gadarwara and Itarsi, mentioned in paragraph 7(c) and 7(f) of the petition. It will be, therefore, convenient to refer first to the position taken up by the Petitioner and the Respondent with respect to the allegations made by Shrimati Indira Gandhi in her speeches as reported in the 'Hindustan Standard' and 'Hindustan Times' of Delhi (Annexures C & D of the petition). The Petitioner has no personal knowledge either of the speeches of Shrimati Indira Gandhi or those of the Respondent or his agents and workers, in which they had utilised her speeches to convey that the Petitioner himself was receiving financial aid from foreign countries. He got information about the speeches of Shrimati Indira Gandhi from newspapers and he has produced the cuttings from Hindustan Standard and Hindustan Times in support of his petition. The Petitioner has deposed in the witness-box that he is a member of the Central Executive of the P.S.P. and knows that the allegation of Shrimati Indira Gandhi that the P.S.P. was receiving foreign financial aid was false. He had written a letter to Pt. Jawaharlal Nehru in connection with the speeches of Shrimati Indira Gandhi, which was put to him in cross-examination and was admitted by him (Ex. P-11). A copy of this letter had been given by him to Pressmen and a Hindi translation of it was published in a newspaper called 'Prahari' on 17th February 1957. This translation Ex. P-11 was admitted by the Petitioner to be more or less correct. It appears from this letter that the Petitioner expressed his satisfaction that Pt. Nehru had promptly removed the wrong impression which had been created by the irresponsible statement made by his daughter. Copy of the speech of Pt. Jawaharlal Nehru on the point has not been produced; but it may be presumed from Ex. P-11 that he contradicted the statement of Shrimati Indira Gandhi that P.S.P. was receiving foreign financial aid. Ex. P-11 was produced on behalf of the Respondent with the object of showing that the wrong impression created by Shrimati Indira Gandhi's speeches had been already removed by Pt. Jawaharlal Nehru himself. However, it appears from the allegations in paragraph 9 of the petition, that the Respondent and his agents and workers had utilised the speeches of Shrimati Indira Gandhi even after the wrong impression created by these speeches had been removed by Pt. Jawaharlal Nehru, to suit their purpose by misrepresenting that the Petitioner himself was getting foreign financial aid.

80. The Respondent has totally denied having made any statement in any of his speeches about the Petitioner or the P.S.P. receiving financial aid from any foreign countries as alleged in paras 7(c) and 7(f) of the petition. In reply to the allegations in paragraph 7(c) of the petition, the Respondent stated in his written statement that all that he said in the speeches referred to therein *viz.*, (on 19th February at Narsimhapur and on 3rd March at Gadarwara) was that "the Petitioner had made it a practice of asking questions in the Parliament which got wide publicity in American papers adversely to the interest of the national prestige of India". In reply to para 7(f), he simply denied having made any such statement as is mentioned therein. In reply to paragraph 9, the Respondent said in his written statement that 'the allegations in that paragraph were absolutely irrelevant and mischievous and that he had no knowledge of the alleged speeches of Shrimati Indira Gandhi and could, not, therefore, either admit or deny the falsity of the statement attributed to her, *viz.*, that the P.S.P. was getting foreign financial aid.' He denied that the statement was utilised by himself or by his workers and agents in the manner alleged in paragraph 9 of the petition or that the publication thereof amounted to any corrupt practice or had materially affected the result of the election.

81. The Respondent has appeared in the witness-box in support of his case. He has denied having made the statements attributed to him in paras 7(c) and 7(f) of the petition in the course of his speeches at Narsimhapur on 19th February, Gadarwara on the 3rd March and at Itarsi on the 1st March 1957. The statements were to the effect that the Petitioner was receiving lakhs of dollars from America to discredit Pt. Nehru and his Government, that the Petitioner used to support American Policy and his photo appeared in American papers and he was praised by them, etc. as stated above. The Respondent has not only denied having made such statements but has denied that he read American papers or had seen any reports of Petitioner's speeches or his photo in such papers. He further states that he does not believe that the Petitioner has been receiving lakhs of dollars from America. He was himself a member of the P.S.P. for some years and was a member of the National Executive of that Party. On the basis of his personal

knowledge he has stated that the P.S.P. was *not* receiving any foreign financial aid. He also admits that if any false statement were made to the effect that either the P.S.P. or the Petitioner who was a member of that body was receiving financial aid from foreign countries, it would have a prejudicial effect on the public.

82. In view of the above admissions of the Respondent, the only important point which requires decision is whether the Respondent did make the aforesaid statements as attributed to him in paragraph 7(c) and 7(f) of the petition. It would appear from these paragraphs that there were three meetings at which the statements were made, *viz.* on the 19th February at Narsimhapur; on the 1st March at Itarsi and on the 3rd March at Gadawara and Itarsi. The Petitioner has produced in support of his allegations, witnesses who were present at each of these three meetings and their evidence will now have to be considered separately for each meeting.

(a) The first of these meetings (in chronological order) was held on the 19th February 1957 at Narsimhapur. In support of the Petitioner's allegations with respect to the speech of the Respondent at this meeting, the following witnesses were produced by the Petitioner *viz.* Onkarprasad (P.W.8), Devicharan (P.W.9), Chaudhary Girirajsingh (P.W.10), Gourishankar (P.W.29) and Manakchand (P.W.47). These witnesses have also deposed to the distribution of the leaflet 'Chetawani' at the Gadawara meeting on the 3rd March or of 'Savdhan' at Narsimhapur and other places and hence they have been already referred to in discussing the evidence in connection with those leaflets. Onkarprasad (P.W.8) is admittedly a P.S.P. worker. Gourishankar (P.W.29) who recently left the Congress as he was dissatisfied with the methods of the Congress-workers and joined the P.S.P., cannot also be considered to be disinterested. Ch. Girirajsingh (P.W.10) says that he does not belong to any party but he has admitted that he issued the leaflet (Ex.P-13), from which it appears that he was an active supporter of the P.S.P. at the last election. The evidence of these witnesses is, however, corroborated by independent evidence. As pointed out already, Devicharan (P.W.9) and Manakchand (P.W.47) seem to be respectable witnesses of good status and do not appear to have any motive whatsoever for giving false evidence. The statement by the Respondent as regards the Petitioner's receiving lakhs of dollars from America was of an important and striking character and may be expected to impress the persons who heard it and therefore, to be remembered easily. The Petitioner has deposed that he never received any financial aid from America, and there is no rebuttal of this statement on the record.

83. The Respondent has admitted that he did address a meeting at Narsimhapur on 19th February 1957 as alleged, but he has denied having said anything of the kind as stated in para 7(c) of the petition. He has stated in his written statement as pointed out above that all that he said was that Shri Kamath had made it a practice of asking questions in Parliament, which got wide publicity in American papers adversely to the national prestige of India. In his deposition, however, he has stated that he merely said that Shri Kamath was asking questions in Parliament which were derogatory to the honour or dignity of the country. It is significant that he has dropped the reference of publicity given to such questions in American papers. As already stated, he has admitted in his deposition that he never read any American papers and does not know about anything having appeared in those papers about Shri Kamath. This is clearly contrary to his averment in para 7(c) of the written statement. His explanation that some of the averments in the written statement were not in accordance with his instructions is difficult to believe and cannot be accepted for reasons given already. The Respondent stated that the Petitioner had asked a question about Indian women who were sent to foreign countries in service and who had no character or lost their character. He says that this question was ruled out in Parliament. In the verification of the 'written statement', it was stated that averments in para 7(c) were based on personal knowledge. But when questioned on the point in cross-examination, the Respondent stated that his statement in para 7(c), about the questions asked by the Petitioner was based on information received. He could not, however, give the name of the person from whom he received the information, or the date or place of receiving it. In another part of his cross-examination, he has stated that he believed, he was present when the aforesaid question about Indian women sent to foreign countries in service, which he considered objectionable, was put in Parliament by the Petitioner and was objected to and ruled out. He admitted, however, that he had not seen any printed report of the question and says that if no printed report of any such question were found, his statement on the point must be incorrect! The evidence of the Respondent on the point is thus conflicting and hard to believe and must be considered very unsatisfactory to say the least.

84. The Respondent has produced Motilal Nayak, a Medical Practitioner of Narsimhapur as his witness with respect to his speech at the meeting at Narsimhapur on the 19th February. He deposed that no statement of the kind mentioned in para 7(c) of the petition (which was read out to the witness) was made by the Respondent in the course of his speech. As regards the Petitioner, the witness stated that the Respondent said in his speech, that it was alleged that he (Respondent) was uneducated (which he admitted) but he said that Shri Kamath was being educated in England while he was undergoing rigorous imprisonment in Jail! The Respondent himself has not deposed to any such statement having been made by him about the Petitioner in the course of his speech. The witness further deposed that the Respondent also said that Kamath sometimes spoke such things as were not in the interest of the country. This is also different to what Respondent himself has said. The witness stated that he does not belong to any party—but his evidence is not in agreement with the position taken up by the Respondent as regards what he actually said about the Petitioner in his speech and does not appear to be trustworthy. Narsimhapur is a fairly big town and the meeting is said to have been attended by a large number of persons. Giriraj-singh estimated the number at 2000; but even if this be an over-estimate, there seems to be no room to doubt that the meeting was largely attended. It is significant that the Respondent was able to get only one witness to support him!

85. All the Petitioner's witnesses referred to above, have deposed that the Respondent said that the Petitioner was getting lakhs of dollars from America to discredit Pt. Nehru and his Government. One of the witnesses had said that the Respondent called him an American agent, and this seems also implied in the statement that the Petitioner was getting lakhs of dollars from America to discredit Pt. Nehru and his Government.

86. It has been stated in the petition that Shrimati Indira Gandhi had made speeches at Delhi, in which she had said that the P.S.P. was receiving foreign aid. Cuttings from the Hindustan Standard dated 24th January 1957 and Hindustan Times dated 4th February 1957 (marked as Ex.P-3 and P-4) were produced with the petition and deposed to by the Petitioner. These contain reports of the speeches made by Shrimati Indira Gandhi at Delhi on 23rd January and 4th February respectively. In the first speech, Shrimati Indira Gandhi is reported to have said that 'P.S.P. did not like the foreign policy of Government as it invoked a certain amount of displeasure of capitalist countries like America. It was a disgrace for the Party that it was receiving monetary help from abroad and indulging in reactionary activities.' In the second speech, she is merely reported to have repeated her avowal that the P.S.P. was receiving financial foreign aid. The Petitioner has deposed that these speeches were published prominently in newspapers in Madhya Pradesh—like Nav Bharat, Yugdharm, Nagpur Times, Free Press, etc. According to the Petitioner, Respondent and his agents took advantage of the speeches of Shrimati Indira Gandhi and distorted them in order to represent that Shri Kamath, the Petitioner, was himself receiving financial aid to discredit Pt. Nehru and his Government. In the reports of Shrimati Indira Gandhi's speeches, it is not definitely stated that the foreign aid was received from America. But the report about the first speech dated 23rd January, which has been referred to above, suggests that it was so received. This report merely says that the P.S.P. was indulging in reactionary activities with help from foreign countries. This statement appears to have been distorted into an assertion that the foreign money was being utilised for discrediting Pt. Nehru and his Government. Looking at the unscrupulous election propaganda in which a leaflet like 'Chetawani' was issued under the forged signature of Shrimati Sucheta Kriplani, it seems quite likely that the speeches of an important Congress leader like Shrimati Indira Gandhi, who is the daughter of the Prime Minister, were taken advantage of and distorted to paint the Petitioner in black colours so as to lower him in the estimation of the electorate. As in the case of 'Chetawani' Pt. Nehru's name seems to have been deliberately introduced in this speech also to influence the large mass of illiterate voters, with whom the Prime Minister is, as is well known, highly popular and who are, therefore, expected to resent any attack on him.

87. The testimony of the Petitioner's witnesses has to be judged in the light of the above circumstances. The testimony of these witnesses is unanimous that the Respondent in the course of his speech at Narsimhapur on the 19th February 1957 said that the Petitioner was receiving lakhs of dollars from America to discredit Pt. Nehru and his Government. Some of the witnesses are interested but their evidence is corroborated by the testimony of others who are disinterested and men of good status. It is true that the whole speech of the Respondent is not available but it seems to me that the meaning of the above words is clear and unmistakable and would not depend upon the context in which they were used. It was natural

for the Respondent to give some reasons, why his opponent, who was already a sitting member of the Parliament from the Hoshangabad constituency should not be given votes and he apparently found it convenient to make use of the speeches of Shrimati Indira Gandhi, which had been recently made and published in newspapers, for that purpose. It is noteworthy that in his written-statement, in reply to para 7(c) of the petition, the Respondent admitted that he made a reference to questions of the Petitioner, which were prejudicial to the national prestige of India and which got wide publicity in American papers. He had verified this paragraph as true to his personal knowledge; but in his deposition before the Tribunal, he has tried to go back on this admission and given unsatisfactory explanations as pointed out above. The evidence of the solitary witness produced by him conflicts with his own evidence and seems to be unreliable.

88. In view of all the above circumstances, I hold that the Respondent did say in the course of his speech on 19th February 1957 at Narsimhapur that the Petitioner was receiving lakhs of dollars from America to discredit Pt. Nehru and his Government.

89. The Respondent, who was himself a member of the P.S.P. for some years admitted that neither the P.S.P. nor the Petitioner was receiving any help from America. It must, therefore, be presumed that when he made the above statement, he must have known that it was false. It is obvious that the statement was reasonably calculated to prejudice the prospect of the election of the Petitioner and this too has been admitted by the Respondent in his deposition.

90. The only point, which needs now to be considered is whether the aforesaid statement is in relation to the personal character or conduct of the Petitioner within the meaning of section 123(4) of the R.P. Act 1951. The law on this point has been already considered in detail while discussing the issues relating to the leaflet 'Chetawan' and it has been pointed out that a statement may have relation to the political as well as personal character of a candidate and if it is of that kind, it will fall within the ambit of section 123(4) of the R.P. Act 1951. The present statement appears to me to be of this category. The foreign aid was apparently alleged to be received by the Petitioner as a politician and not as a private individual; but he is alleged to be receiving it to discredit Pt. Nehru and his Government. In other words, he is alleged to be a hireling of a foreign country for discrediting the Prime Minister of his own country and his Government. This clearly reflects adversely on the personal integrity and honour of the Petitioner and the principle laid down in the North Louth case and followed in 10 E.L.R. 242, which have been referred already will, therefore, apply. I accordingly hold the aforesaid statement to fall within the purview of section 123(4) of the R.P. Act 1951.

91. To sum up, it has been proved that the Respondent stated in a public meeting at Narsimhapur on the 19th February 1957 that the Petitioner was receiving lakhs of dollars from America to discredit Pt. Nehru and his Government; that this statement was a statement of fact and was false; that the statement was in relation to the personal character of the Petitioner and that it was calculated to prejudice the prospects of the election of the Petitioner. I accordingly hold that the Respondent was guilty of a 'corrupt practice' within the meaning of section 123(4) of the R.P. Act 1951.

92. The Respondent himself having been found to have committed the aforesaid 'corrupt practice', his election is declared void under section 100 (1)(b) of the R.P. Act 1951.

93. The next meeting was the one held at Itarsi on 1st March 1957 referred in paragraph 7(f) of the petition. The witnesses as regards the Respondent's speech at this meeting are Sheokant (P.W. 25), Govindsingh (P.W.26) and Hitvinod (P.W.27). They depose that they were present at the meeting and heard the speech of Shri Bagdi. Sheokanth (P.W. 25) is a Press-owner of Itarsi. He stated that in the course of his speech, Shri Bagi said that Shri Kamath was getting money from America and with its help was opposing Pt. Nehru and living in luxury. Govindsingh (P.W.29) is a cultivator, but has passed the Matriculation examination. He stated that Shri Bagdi said that Shri Kamath was receiving dollars from America and was living in luxury, that he supported American Policy and his photo appeared in American papers. He said that the Respondent also added that to vote for such a person was harmful to the country. The evidence of the third witness Hitvinod (P.W.27), who is a fuel-seller is to the same effect. The cross-examination of the witnesses has not disclosed that they have any motive for giving false evidence.

94. The Respondent admitted that he made a speech at a meeting at Itarsi on the 1st March 1957, but denied the allegations made in para. 7(b) in respect of his speech and said in his deposition that he made no reference to all to Shri Kamath in that meeting.

95. Two witnesses were produced by the Respondent in respect of his speech at Itarsi on 1st March viz., Babulal Pali, Loco Foreman (R.W. 3) and Rameshchandra Rawat, Contractor (R.W. 7). These witnesses have deposed that they were present at the meeting at Itarsi on 1st March and heard Shri Bagdi's speech. They stated that Shri Bagdi did not make any such statements as are attributed to him in para. 7(f) of the petition. Shri Pali is a loco-foreman of Central Railway at Itarsi getting Rs. 340 p.m. and seems to be a witness of good status. He says that the Respondent did not refer to Shri Kamath at all in his speech. The second witness Rameshchandra Rawat is a Contractor of Itarsi. He deposes that all that the Respondent said about Shri Kamath was that he as well as Shri Kamath had been members of Parliament and their work was known to the public and the people should vote for whomsoever they liked. He admitted that his truck had been given to the Respondent for 2 weeks for use during the election period and that the Respondent has been putting up in his house—though after the election. He was a member of the Forward Bloc till 1954 but says that he does not know whether Shri Bagdi was in the Forward Bloc. He admits that he is now a member of the Congress. This witness cannot be considered to be disinterested and his evidence did not appear to be straightforward. He contradicts the Respondent and Pali (R.W. 3) by stating that the Respondent did refer to the work of himself and Shri Kamath as members of Parliament in the course of his speech and said that work of Shri Kamath and himself was before the public and people should decide for themselves for whom to vote, while the Respondent and Pali said that the Respondent made no reference at all to Shri Kamath at the meeting.

96. The evidence of the Petitioner's witnesses seems to me to be on the whole more reliable; but their statements as to what the Petitioner actually said are conflicting in some respects and not in agreement with what is alleged in paragraph 7(f) of the petition. In para. 7(f) it is stated:

"Kamath always supports American Policy in his speeches. His photo appears often in American papers. American papers often praise him and he gets dollars from America."

97. Even taking the above averments as they stand, they do not appear to amount to a 'corrupt practice'. The fact that Shri Kamath supports American Policy will only be a criticism of his political views and activities. As regards receipts of dollars, *no motive* is mentioned. The receipt of dollars cannot be considered to be objectionable unless it was for any sinister or evil purpose. In the case of the meetings at Narsimhapur and Gadarpura it is alleged in para 7(c) of the petition, that the Petitioner was receiving lakhs of dollars from America to discredit Pandit Jawaharlal Nehru and his Government; but no such object is alleged in this paragraph. I am, therefore, of opinion, that the averments in para. 7(f) as they stand, would not constitute any 'corrupt practice'. The evidence of the Petitioner's witnesses is also not in conformity with para. 7(f) of the petition. Sheokanth (P.W. 25) says that the Petitioner was receiving money from America and was opposing the Congress and living in luxury. The latter two allegations are not in para. 7(f) of the petition. Govindsingh (P.W. 26) also says that the Respondent said in his speech that the Petitioner was living in luxury. Hitvinod (P.W. 27) says that the Respondent called the Petitioner an 'American Agent' a statement not to be found in the petition. The evidence is thus not satisfactory enough to arrive at any definite finding as to what was actually said by the Respondent.

98. The averments in para 7(f) of the petition by themselves do not seem to constitute any 'corrupt practice' as pointed out above and the evidence produced in support thereof is also conflicting and unsatisfactory. In the circumstances, I hold that the statements given in paragraph 7(f) of the petition have not been proved to constitute any 'corrupt practice' and decide issue No. 6(2) against the Petitioner. On this finding, it is unnecessary to give any findings on Issues No. 6(3), 6(4), and 6(5). As the Respondent has admitted that he did address a public meeting at Itarsi on 1st March, 1957, I find Issue No. 6(1) in favour of the Petitioner. But as issue No. 6(2) has not been proved, I give no findings on Issues No. 6(3), 6(4) and 6(5). I decide the issue No. 6(6) against the Petitioner and hold that no corrupt practice as alleged in paragraph 7(f) of the petition is proved.

(c) 99. The third meeting was held at Gadarwara on the 3rd March 1957. At this meeting also the Respondent is alleged to have said that the Petitioner was receiving lakhs of dollars from America to discredit Pandit Nehru and his Government. The witnesses of the Petitioner as to this meeting are Devicharan (P.W. 9), Ch. Girirajsingh (P.W. 10), Chhotelal (P.W. 19), Gourishankar (P.W. 20) and Babulal Tandon (P.W. 30). Their evidence has been already referred to in connection with the publication of the leaflet 'Chetawani'.

100. Out of the above witnesses, Devicharan (P.W. 9) has said nothing about the receipt of lakhs of dollars by the Petitioner from America. Chaudhary Girirajsingh says that the Respondent referred to the speeches of Shrimati Gandhi and said that the Petitioner and his Party were receiving lakhs of dollars from America. He did not say for what purpose the dollars were received. Chhotelal (P.W. 19) also says that the Respondent said that the Petitioner was receiving lakhs of dollars from America, but he does not know the purpose for which the dollars were received. Gourishankar (P.W. 29) has deposed that the Respondent read portions of the speeches of Shrimati Indira Gandhi and said that Shri Kamath was receiving lakhs of dollars from America to discredit Pt. Jawaharlal Nehru and his Government. Babulal Tandon (P.W. 30) also deposed that the Respondent said that the Petitioner was receiving lakhs of dollars from America, but he does not remember for what purpose they were received.

101. It has been already pointed out while dealing the evidence relating to para. 7(f) of the petition, that allegations about mere receipt of dollars from America by the Petitioner would not constitute any corrupt practice, unless it is shown that the money was being received for some sinister purpose e.g., discrediting Pt. Nehru and his Government, as stated by Gourishankar (P.W. 29). But he is the only solitary witness who has mentioned this purpose. Gourishankar was a member of the Congress and joined the P.S. only a short time before the election, as he was dissatisfied with illegal practices of Congress workers. He is, therefore, not a disinterested witness. He admits, moreover, that he did not hear the whole of Shri Bagdi's speech and attended another meeting at intervals.

102. None of the other witnesses have been able to state the purpose for which the dollars were received. Devicharan (P.W. 9) says nothing at all about receipt of dollars. Thus the evidence of the Petitioner's witnesses relating to the Respondent's speech at Gadarwara on 3rd March 1957, on this point is unsatisfactory and the statements of the witnesses differ as to what was actually said by the Respondent.

103. The Respondent's evidence relating to the meeting has been already discussed in connection with the publication of 'Chetawani' on 3rd March 1957, and found to be unsatisfactory. But it is unnecessary to discuss it further as the Petitioner's own evidence on the issue under discussion is not satisfactory enough to establish the alleged 'corrupt practice'.

104. The Respondent has admitted that he made a speech at Gadarwara on the 3rd of March 1957, and hence I find Issue No. 3(1) in favour of the Petitioner. But for reasons given above, I find the other issues against the Petitioner and hold that the 'corrupt practice' alleged in paragraph 7(c) of the petition by the Petitioner with respect to the Respondent's speech at Gadarwara on the 3rd March, is not proved.

105. It may be stated here for the sake of clarity that although I have found the 'corrupt practice' alleged in respect of the speeches of the Respondent at Itarsi on the 1st March and at Gadarwara on 3rd March to be not proved, that finding has been given simply because the evidence of the witnesses is not satisfactory enough to establish clearly what was actually said by the Respondent in respect of the receipt of dollars by the Petitioner. But I have no doubt that the Respondent did make reference to the receipt of dollars and made some statements in that connection in his speech at the meetings at Itarsi and Gadarwara on 1st and 3rd March 1957. As the exact words used by the Respondent in this respect are, however, not clearly proved by the evidence of the witnesses for the Petitioner and their statements are conflicting, I have given the benefit of doubt to the Respondent. As regards the Narsimhapur meeting the evidence seems to be clear and satisfactory and hence the 'corrupt practice' alleged in respect of the Respondent's speech at that meeting was held to be proved.

106. Issues No. 8(1) to 8(3)—Paragraph 10 of the petition—Issues No. 8(1) to 8(3) relate to the allegations in paragraph 10 of the petition. It is alleged in

this paragraph that Shri M. N. Gurao, Election Agent of the Respondent addressed a public meeting at Itarsi on the 3rd March 1957, and in the course of his speech used the following threatening language:

"Guns are still on our shoulders. We want to tell our opponents that we shall even suck (drink their blood). We and our friends have still got with us sufficient weapons. We will even open fire in this election and shall play 'Holi' with their blood".

107. In support of this allegation, the Petitioner has produced 4 witnesses viz., Govindsingh (P.W. 26), Hitvinod (P.W. 27) and Sheetalprasad (P.W. 43) and Qayamul Hasan (P.W. 55). The evidence of the first two witnesses has been already referred to in connection with another meeting at Itarsi on the 1st March 1957 which was addressed by Shri Bagdi and which also they had attended. They have deposed that the meeting on the 3rd March was addressed by Shri M. N. Gurao, Election Agent of Shri Bagdi and that he used words to the effect stated in para. 10 of the petition. Govindsingh (P.W. 26) has deposed that Shri Gurao said that the opposing party of Shri Kamath was getting money from America, that Congressmen had made great sacrifices, that guns were still on their shoulders and they had not yet been taken down and that if necessity arose, they would play 'Holi' with the blood of persons who had made common cause with a foreign country and who received foreign aid. The second witness Hitvinod (P.W. 27) has stated that Shri Gurao said that he was one of the oldest associates of Shri Bagdi and that he took part in the revolutionary movement of 1942 as a bold man to drive out the English from the country. He further said that Shri Kamath was receiving lakhs of rupees from America, that guns were still on their shoulders and if occasion arose, they would play 'Holi' with the blood of their opponents. The third witness Sheetalprasad (P.W. 43) who is a Pleader at Itarsi was also present at the meeting on the 3rd March 1957. He has deposed that Gurao said that he was supporting the Congress because it had adopted socialist views lately, but he belonged to the revolutionary party, who had still guns on their shoulders and these had not yet been taken down and that they would play 'Holi' with the blood of the opponents. This witness says that he used to be a worker of the P.S.P. but had resigned in 1955, owing to some internal disputes. He admits having recently joined the P.S.P. again after the last general election. He stated that he knew that both Shri Bagdi and Shri Gurao were members of the Revolutionary Party who fought against British rule and believed in the use of arms to achieve their object. Qayamul Hasan (P.W. 55) who is the local Secretary of the P.S.P. at Itarsi was present at the meeting and has deposed that Shri Gurao said that they had a large quantity of weapons and were not afraid of any one and that if necessity arose, they would shoot their opponents and play 'Holi' with their blood. The last two witnesses being members of the P.S.P. are interested, but nothing substantial has been brought out in cross-examination against the other two witnesses.

108. The Respondent has produced three witnesses to rebut the above evidence viz. Babulal Pali (R.W. 3), Rameshchandra Rawat (R.W. 7), and M. N. Gurao (R.W. 9), himself. M. N. Gurao (R.W. 9) denies that he used the threatening words attributed to him in para 10 of the petition or any words to that effect. He says that there was no reference to arms or weapons in his speech at all and that he confined himself to the usual topics such as—the work done by the Congress, its future programme, five years' plan etc. The other two witnesses support this statement. They also depose that Gurao did not use any threatening language as attributed to him in para 10 of the petition. Babulal Pali (R.W. 3) who is a Locomotive Foreman of the Central Railway, is not shown to be interested. Rameshchandra Rawat, however, does not appear to be a disinterested witness, as already pointed out while discussing his evidence with respect to preceding issues.

109. Even taking the evidence of the Petitioner's witnesses as it stands, however, its exact import and significance is not clear. The Respondent as well as his Election Agent, M. N. Gurao, were admittedly members of the Revolutionary Party, before the attainment of Indian Independence in 1947. The Respondent had been prosecuted for waging war against the King and sentenced to an aggregate term of rigorous imprisonment for sixty-seven years—though the sentence was remitted after the attainment of Indian Independence. M. N. Gurao was one of his oldest associates. It is, therefore, quite likely that Shri Gurao may have referred to the use of arms and weapons and the part played by the Respondent and himself in fighting against the British during pre-independence days. But threatening language to the voters in an election meeting would seem to be rather out of place and is more likely to prejudice the audience against the speaker as deposed to by the Respondent. Owing to the secrecy of the ballot there is ordinarily no chance for any one to know for whom any individual voter has voted and so use of threatening language of the

type, alleged in para 10 of the petition was not likely to serve any useful purpose. The exact significance of the words alleged to have been used cannot be ascertained without knowing the context in which these words were used. The witnesses have deposed to the words without giving the context in full. It seems, in the circumstances, quite possible that the speaker was merely using figurative language when he said that guns had not been taken down from their shoulders etc. and perhaps only meant to say that he and his Party were determined to put up a tough fight against their opponents at the election, in the same way as they had done in the pre independence days against the British.

110. The evidence does not, therefore, seem to be sufficiently clear to establish any 'Corrupt practice' within the scope of section 123(2) of the R.P. Act beyond doubt. The evidence is also contradicted by the testimony of the 3 witnesses produced by the Respondent, one of whom at any rate is disinterested.

111. As it is admitted that M. N. Gurao did address a public meeting at Itarsi on the 3rd March 1957, I decide Issue No. 8(1) in favour of the Petitioner, but for reasons given above, I decide the other issues against the Petitioner and hold that the 'Corrupt practice' alleged in paragraph 10 of the petition is not proved.

112. *Issues No. 10(1) to 10(3)—Paragraph 12 of the petition.*—Issues No. 10(1) to 10(3) arise out of the allegations in paragraph 12 of the petition as regards the hiring of tongas at Gadawara to carry voters to the polling station on the 4th March 1957, by the Respondent and Shri Kishorilal Paliwal, who was Congress candidate for the State Assembly from Gadawara constituency.

113. Four tongawallas viz. Ramratan (P.W. 15), Laloo (P.W. 16), Baiju (P.W. 17) and Wahab (P.W. 18) have been produced as witnesses in support of the allegations in para 12 of the petition. These witnesses have deposed that they were engaged by Shri Kishorilal Paliwal to carry voters to the polling stations at Gadawara on the 4th March 57. But the Respondent was not with Shri Kishorilal when he spoke to them and engaged their tongas. One Hargovind Sonar had been sent to call the tongawallas to Shri Kishorilal's bungalow. Three of the witnesses have stated that when they reached Shri Kishorilal's bungalow, Hargovind asked them to wait for a short time as Shri Kishorilal was having some talk with Shri Bagdiji. But the witnesses admittedly did not see Shri Bagdiji or had any talk with him. Hargovind was cited as a witness, but was not examined. The presumption is that he would not have supported the Petitioner's case. There is, therefore, no evidence to prove that the Respondent had anything to do with the engagement of Tongas by Shri Kishorilal. The evidence of the tongawallas also is not corroborated by any other independent evidence, e.g. of the voters carried by them, or the persons who were bringing the voters to the tongas for conveyance to the polling station.

114. In view of the Respondent's admission of the averments of the Petitioner in paragraph 4 of the petition, Shri Kishorilal may be looked upon as an 'Agent' of the Respondent. But there is no evidence to prove that Shri Kishorilal was acting with the 'consent' of the Respondent in hiring the Tongas as required by section 100(1)(b) of the R.P. Act. So, even if the 'corrupt practice' alleged be taken to have been committed by Shri Kishorilal, this finding by itself would not be sufficient to declare the election of the Respondent void under section 100(1)(b) of the R.P. Act 1951. The election of the Respondent could be declared void only if it were shown that the result of the election was materially affected by the 'corrupt practice' [see section 100 (1) (d) (ii) of the R.P. Act 1951]. But there is no evidence to prove that it was so affected. Each tongawalla took about 30 to 40 voters in all to the polling stations that day. So, the total number of voters conveyed by the four tongawallas could not be more than 160. The Respondent, however, obtained about 25,000 votes more than the Petitioner. So, even if the 160 votes of the voters conveyed by the abovementioned tongawallas were to be excluded, it is obvious that the result of the election would not have been affected at all.

115. I, therefore, decide Issue No. 10(1) to 10(3) against the Petitioner and hold that the 'corrupt practice' alleged in para 12 of the petition is not proved.

116. *Issues No. 11(1) and 11(2)—Paragraph 17 of the petition.*—Issues No. 11(1) and 11(2) relate to the allegations in paragraph 17 of the petition with respect to Chhidamilal Patwari of village Imalla. According to these allegations, Shri Mushran, Congress candidate for the State Assembly from the Gotegaon constituency and the Respondent visited the village Imalla on or about the 20th February 1957 and called Chhidamilal Patwari of the village and told him that the prospects of the Congress candidates were

very poor in that area and unless he assisted the Congress candidates and their prospects improved, he would be dismissed. Chhidamilal Patwari (P.W. 13) was produced as a witness by the Petitioner in support of these allegations. He has deposed that Shri Mushran and Shri Bagdi visited the village Imalia 2 or 3 days before the election day (25th was the polling date). Chhidamilal gives the date of Shri Mushran's visit as 22nd but cannot name the month. He states that he was sent for by Shri Mushran and Shri Bagdi. He accordingly went to the chabutra of a temple when they were sitting. Shri Mushran spoke to him and said that the prospects of the Congress on that side were very poor and that he should assist in the matter. The Patwari said that he, being a Government servant, could not help any Party. Thereupon Shri Mushran said that unless he helped, he would be dismissed. Shri Bagdi was sitting near Shri Mushran but did not say anything. After the above talk, both left the village.

117. The cross-examination of the witness had not disclosed anything substantial against him. Chhidamilal (P.W. 13) has stated that Manegaon is one of the villages in his circle and that Thakur Shashi Bhushansingh (candidate for the Praja Socialist Party for the State Assembly from Gotegaon constituency) used to be malguzar of that village. But it is well known that the Malguzari rights were abolished some years ago and this fact by itself cannot now be considered to be of much significance. There is no other evidence about any present connection between the witness and Thakur Shashi Bhushansingh to show that he may be giving his evidence under the latter's influence. Another point brought out in the cross-examination was that Shri Khera Naib-Tahsildar had gone to the village on the 23rd February 1957 for some inquiry against the Patwari. But that inquiry related to the question of 'Nistar' and has no bearing on the issues under discussion. The Patwari has admitted that he did not complain to the Naib-Tahsildar or any one else about the pressure brought upon him by Shri Mushran to assist the Congress party in the election; but this is intelligible. In view of the position of Shri Mushran, as Deputy Minister, the Patwari may have been naturally afraid of complaining against him. The Respondent Shri Bagdi did not actually say anything to the patwari, but in the circumstances it may be presumed that Shri Mushran was speaking on behalf of himself as well as the Respondent.

118. Chhidamilal had deposed that three persons of the village viz., Sadhuram, Harlal and Damrural were sitting closely on another Chabutra, when Shri Mushran had the above-mentioned talk with him. These persons have been produced as witnesses (see P.Ws. 36, 37 and 38) and they have corroborated the statement of the Patwari that Shri Mushran had a talk with him, in the circumstances stated above. All the three have deposed that some 2 or 3 days before the election, Shri Mushran accompanied by 4 or 5 persons came to the village. According to their statements, Shri Mushran and one other person (whose name they do not know, but whom they describe as a 'fat-dark' in complexion and taller than Shri Mushran) got down from their motor-car and sat on the chabutra of a temple. The Patwari was then sent for and they had some talk with him. They do not know what the talk was. After the talk, Shri Mushran left the village, with the persons who had accompanied him. All the three witnesses appear to be well-to-do landowners paying Rs. 250 to 300 as land revenue and they have not been shown to have any motive for giving false evidence.

119. But there are some discrepancies in the statements of these witnesses owing to which their evidence does not seem to be free from doubt. Discrepancies as to dates may be attributed to lapse of time but there are other discrepancies, which seem material. Sadhuram (P.W. 36) says that Shri Mushran took Chhidamilal aside to a distance of 15 or 20 paces and had talk with him there and the statement of Harlal is to the same effect. The Patwari's own statement, however, is that Shri Mushran and Shri Bagdi were sitting on the Chabutra and had talk with him there. Again Sadhuram says that he remained sitting on the Chabutra and did not get up or bow to Shri Mushran when he came, though he knew him. Harlal on the other hand, says that all of them stood up and greeted Shri Mushran. These discrepancies seem to be material and cannot, therefore, be ignored. Though the witnesses were giving evidence after a long time, they were not, I think, likely to make a wrong statement on the above points, if they were really present when Shri Mushran visited the village and had a talk with the Patwari. In any case, there is at least room for doubt as regards the truth of the evidence of these witnesses.

120. The Respondent had admitted in his written-statement in reply to paragraph 17 of the petition that he visited Imalia with Shri Mushran but denied that they had any talk with the Patwari. In his deposition he has tried to go

back on the admission and has stated that he did not visit Imalia at all during the Election period and the admission in the written statement was wrong and not in accordance with his instructions to his counsel! For reasons already given, I find it difficult to accept this statement. But as the Patwari's evidence is not corroborated by reliable evidence and as the Respondent has denied having had any talk with the Patwari, it does not seem safe to take the alleged 'corrupt practice' to be established on the basis of the solitary statement of the Patwari.

121. I, therefore, hold that Issues No. 11(1) and 11(2) have not been proved beyond doubt by the evidence on the record and find that the corrupt practice alleged in paragraph 17 of the petition is not proved.

122. Issues No. 12(1) to 12 (4)—Paragraph 18 of the petition.—Issues No. 12(1) to 12(4) relate to the 'corrupt practice' alleged in paragraph 18 of the petition. According to the allegations in this paragraph, the Respondent and Shri Mushran, Congress candidate for the State Assembly from Gotegeon constituency, visited the village Pindral on or about the 19th February 1957 and asked Tarachand Teacher, who was working under the Janapada Sabha to work for the Congress candidates. Tarachand requested for a permit for timber for repairing his house and he obtained the same in consideration of his agreeing to work for the congress.

123. Tarachand teacher (P.W. 20) has been produced as a witness in support of these allegations. He has deposed that the Respondent and Shri Mushran visited his village on the 7th February 1957 and not 19th February 1957 as stated in the petition. This is a material discrepancy. If the date was wrongly given, the Petitioner ought to have applied for amendment, but he did not do so. As the petition stands, no evidence has been produced with respect to the visit of Shri Mushran and Shri Bagdi to Pindral on the 19th February 1957. Evidence relating to the visit on the 7th February is not relevant and on this ground alone, the petitioner must be held to have failed to prove the 'corrupt practice' committed on the 19th February 1957 as alleged in the petition. However, even the evidence produced as it stands does not establish any 'corrupt practice' and I propose to discuss the evidence briefly to show this.

124. Tarachand (P.W. 20) has deposed that on the 7th February 1957, he was working in his school when at about 3:00 P.M., the Respondent and Shri Mushran visited the village Pindral. They stopped their car near a threshing floor outside the village and sent for Tarachand. Tarachand received their message through the Head Master of his school and went to see them. They took him aside to a distance of about 20 or 25 paces from the motor car and then asked him to secure votes for the Congress. The Respondent told him that if he wanted anything to be done for him, they would get it done. Tarachand then told them that he was in need of timber for construction of his house and they promised assistance for the purpose. They asked him to apply to the Tahsildar and Shri Mushran told him to see his brother Shri A. N. Mushran, Pleader at Narsimhapur. Tarachand accordingly applied to the Tahsildar on the 9th February 1957. Shri A. N. Mushran, Pleader, when he saw him as directed by Shri Mushran, accompanied him to the Tahsildar's court and spoke to him in English. The Tahsildar then granted a permit for timber to him—though the quantity was less than what he had applied for. Tarachand states that he did not actually work for the Congress candidate.

125. The record of the application for timber presented by Tarachand to the Tahsildar (which was sent for under O. XIII r. 10 C.P.C.) corroborates the statement of Tarachand that he got a permit on 12th February 1957 from the Tahsildar Narsimhapur (vide case No. 37 of 1956-57). But no other evidence was produced to corroborate Tarachand's testimony.

126. The Respondent did not deny in his written statement his visit to the village Pindral along with Shri Mushran, but denied that he and Shri Mushran asked Tarachand to work for the Congress candidates or that Tarachand asked for a permit for timber in consideration of such work and obtained the same.

127. In the present instance, Tarachand's evidence is in the nature of the evidence of an accomplice, as he had expressed his willingness to work for the Congress candidates and had actually obtained in consideration for it a permit for timber with the assistance of Shri A. N. Mushran, Pleader. It is well-established that the evidence of an accomplice cannot be relied on without corroboration in material particulars (A.I.R. 1957 S.C. 637). But there is no such corroboration of his statement in material particulars on the record. The record of the application of Tarachand shows that he applied for a permit on 9th February 1957 and that he was granted a permit on the 12th February 1957. The record does not show that Shri A. N. Mushran accompanied him and was present in court with

him. Nor is there any independent corroboration of his visit to Shri A. N. Mushran, Pleader on the 9th February, 57. Shri A. N. Mushran, who was produced as a witness (see P.W. 58) has denied that Tarachand Teacher ever asked him for assistance in obtaining a permit for timber from the Tahsildar Narsimhapur or that he gave any such assistance.

128. The Respondent has denied in the witness-box the allegations of the Petitioner as regards this corrupt practice. We have, therefore, nothing beyond the uncorroborated testimony of Tarachand to support the Petitioner's case. The Petitioner has, moreover, produced Shri K. S. Rao, who was Tahsildar of Narsimhapur in February 1957, as his witness. This witness has deposed that he was out on tour throughout the day on the 9th February 1957 and visited a number of villages. This evidence is supported by the entries in the Tour Diary of the Tahsildar, of which a certified copy has been filed on this record (vide Ex. N.A.-1). This evidence of the Tahsildar belies the statement of Tarachand that he visited the Tahsildar's court on 9th February 1957 with Shri A. N. Mushran, Pleader.

129. It may be mentioned in the end that it is admitted that Tarachand as a Teacher under Janapada Sabha is not a Government servant within the meaning of section 100(7) and the corrupt practice, if any would, therefore, fall under section 123(1) and not under section 123(7) R.P. Act 1951.

130. In view of the inadequate and unsatisfactory nature of the evidence on the record, I hold that the Petitioner has failed to establish Issues No. 12(1) to 12(4) and therefore, decide them against him. I find that the corrupt practice alleged in paragraph 18 of the petition is not proved.

131. **Issues No. 13(1) to 13(6)—Paragraph 19 of the petition:**—The above issues arise out of the allegations in paragraph 19 of the petition regarding the construction of a well at the village Singhpur. It is alleged that the Respondent and Shrimati Sarla Devi Pathak visited this village on the 19th February 1957 and addressed a public meeting in the evening and asked the people to vote for the Congress. The villagers said that there was scarcity of water in the village and a well was badly needed. The Respondent with several villagers then selected a site for the well in the land belonging to one Vishwanathsingh and both the Respondent and Shrimati Sarla Devi Pathak promised to get the well constructed after the election. They also performed the 'digging' ceremony of the well and a coconut was broken on the occasion to assure the villagers about the construction of the well as promised. According to the Petitioner, this was done with the object of inducing the electors of the village to vote for the Respondent.

132. In support of the above allegations, four witnesses from the village Singhpur have been produced, viz. Vishwanathsingh (P.W. 11), Mangal (P.W. 12), Charka (P.W. 13) and Harprasad (P.W. 14). The latter three witnesses were present at the meeting addressed by the Respondent and Shrimati Sarla Devi on 19th February 1957. They have deposed that the Respondent and Shrimati Sarla Devi visited the village 4 or 5 days before the election day (25th February 1957) and addressed a public meeting and in the course of their speeches they asked the villagers to vote for the Congress. The Harijans of the village complained that there was great scarcity of water in the village and no well had been constructed for the. The Respondent and Shrimati Sarla Devi, therefore, promised to get a well constructed. The people, however, wanted the well to be constructed first, but as only 4 or 5 days were left before the polling date, in order to assure them, the Respondent and Shrimati Sarla Devi along with the villagers selected a site—which was in the land of Vishwanathsingh (P.W. 11)—and performed the 'Mahurat' ceremony (auspicious ceremony to mark the beginning of the construction of the well). Mangal (P.W. 12) says that in view of the promise of the Respondent and Shrimati Sarla Devi to have the well constructed, the Harijans of the village (about 100) voted for the Congress at the last election.

133. Mangal and Charka (P.Ws. 12 and 13) are Harijans of the village Singhpur while Harprasad (P.W. 14) is an Adivasi of that village. Charka has deposed that the Respondent and Shrimati Sarla Devi had visited the village 4 or 5 days before the Sankrant (14th January 1957) and asked the people to vote for the Congress on that occasion also but the people had complained about the scarcity of water and told them to have this difficulty removed first.

134. Vishwanathsingh (P.W. 11) is a big landowner of the village Singhpur, owning about 400 acres of land. He has deposed that the Respondent and Shrimati Sarla Devi went to his house along with several other persons on the morning of the 20th February 1957 about 8-00 A.M. and told him that they wanted

to have a well for Harijans of the village constructed on a site in his land, which had been selected for the purpose. They, therefore, requested him to give the required piece of land for the well. Vishwanathsingh agreed to this proposal on two conditions—viz. (1) that the money required for the construction of the well should be first deposited with some one in the village and that (2) the well should be constructed after the election. The latter condition was imposed by him as he did not wish the voters to be influenced at the approaching election by the construction of the well. He is a member of the Praja Socialist Party and had been elected to the Janapada Sabha on behalf of that Party. He was, therefore, anxious to see that the voters should not be influenced in favour of the Congress by the construction of the well proposed by the Respondent and Shrimati Sarla Devi. The Respondent and Shrimati Sarla Devi informed him that a sum of Rs. 500 had been already deposited with Chhablal, Sarpanch of the Gram Panchayat, who was accompanying them. Vishwanathsingh was then taken to the site, which had been selected for the well. He found that some land had been dug and a coconut had been broken, which showed that the 'Muhurt' ceremony of the well had been already performed. The Respondent and Shrimati Sarla Devi admitted that the Muhurt ceremony had been performed in anticipation of his permission and requested for permission of Vishwanathsingh for construction of the well on his land. Vishwanath Singh insisted on the conditions mentioned above; but in spite of this, the Respondent and Shrimati Sarla Devi had the work commenced. Vishwanathsingh did not interfere as he apprehended that his interference might prejudice the Harijan voters against his Party.

135. Charka (P.W. 13) stated that the Respondent and Shrimati Sarla Devi had told the villagers that they would speak to Vishwanathsingh about the land the next day and that they actually did come to the village next day at about 8.00 A.M. and were seen visiting the mohalla of Harijans with Vishwanathsingh and they had some talk with Vishwanathsingh. Mangal (P.W. 12) states that Munna Chamar was employed the next day to dig the site of the well upto a depth of a 'Hath' and that the actual construction work of the well was carried out by a Contractor later on. Ch. Girirajsingh (P.W. 10), Chairman of the P.W.D. Standing Committee, Janapada Sabha, has deposed that he had to go to Singhpur to inspect a hand-pump in the third week of February 1957 and he was told by Vishwanath Singh (who is a member of the Janapada Sabha) that a ceremony for the construction of a well at Singhpur for Harijans had been performed by Shri Bagdi and Shrimati Sarla Devi Pathak. These witnesses have thus corroborated the evidence of Vishwanathsingh.

136. Narmadaprasad, Patwari of Singhpur, has produced a sketch map showing the location of the new well constructed in the village in May 1957 (Ex. P-16). He says that he does not know by whom the well was constructed and that this would be ascertained and noted by the Revenue Inspector when he inspected and inquired about the well. As a Patwari he ought to know who had constructed the well, but it appears he is afraid of disclosing the truth.

137. The witnesses from Singhpur (P.W. 11, P.W. 12, P.W. 13 and P.W. 14) have not been shown to have any motive for giving false evidence. They were cross-examined as there was no one present to cross-examine them on behalf of the Respondent. The Respondent's counsel knew that the case had been fixed for evidence on the 18th November 1957, when these witnesses were examined; but somehow no one appeared for the Respondent on that day. No reason given for the absence of Respondent and his counsel, nor had any adjournment been prayed for. The evidence of the above witnesses must, therefore, be accepted as it stands.

138. It was pointed out in connection with the evidence of the above witnesses that the Respondent is said to have addressed a public meeting at Narsimhapur on the same date i.e. 19th February 1957 at about 9-30 P.M. (vide P.W. 19 and 18). One of the witnesses (Mangal P.W. 12) has stated that the meeting at Singhpur was held at 8-00 P.M. The Respondent is alleged to have also addressed a public meeting at Narsimhapur at about 9-30 P.M. It was argued that if the Muhurat ceremony was performed by the Respondent after the meeting, it would have taken a long time and the Respondent could not have gone to Narsimhapur and addressed a public meeting there at about 9-30 P.M. It was, therefore, urged that no Muhurat ceremony could have been performed. But although Mangal (P.W. 12) has given the time of the meeting as 8-00 P.M. the other witnesses have merely said that it was held 'after sun-set'. As is well-known, villagers have little idea about exact time by the clock and the latter statement is, therefore, more likely to be correct. From the almanac it appears that on 19th February 1957 the sun-set, was at about 6-30 P.M. The meeting was probably held soon

afterwards. A simple *Muhurat* ceremony in a village need not have taken long and there could not, in my opinion, be any difficulty in the Respondent reaching Narsimhapur after the ceremony by about 9-30 P.M., as Singhpur is only about 5 miles from Narsimhapur and usually jeep cars are used by prominent election workers in their tours.

139. It was suggested during the course of the cross-examination of Narmada Prasad Patwari of Singhpur that the well in question was constructed by Janapada Sabha. Ex. P-13 was put to the witness in this connection, but he stated that he did not know, if the well was constructed by the Janapada Sabha. Ex. P-13 is a leaflet published by Ch. Girirajsingh (P.W. 10) appealing to the public to vote for the Praja Socialist Party. In this leaflet, it is stated *inter alia* that certain sums had been sanctioned for public purposes by the Janapada Sabha in various villages due to the efforts of the Praja Socialist Party. Amongst there is mentioned an item of Rs. 532-8-0 sanctioned for a well at Singhpur (Bara).

140. Chaudhary Girirajsingh (P.W. 10), Chairman of the Public Works Standing Committee of the Janapada Sabha when examined on the point admitted having issued the leaflet Ex. P-13, but stated that item of Rs. 532-8-0 was really for a hand-pump in a school at Singhpur and that the word 'Kua' (well) had been wrongly printed in the leaflet. He further stated that he had issued a correction later on. From the evidence of this witness, it appears that he, as Chairman of the P.W. Standing Committee of Janapada Sabha, had proposed the construction of four wells at the villages Chandpura, Dungaria, Bamhori and Baghwar as part of the programme for the year 1956-57. Later on a proposal was received for the construction of wells at Singhpur, Simaria, Gidhwani and Kareli from the Chief Executive Officer of the Janapada Sabha, he opposed the proposal, as wells were in his opinion needed more urgently in the four villages settled by him. Chaudhary Girirajsingh deposed further that the wells were proposed for the four villages Singhpur, Simaria, Gidhwani and Kareli by the Chief Executive Officer on account of a proposal received from the Public Health Engineer, Madhya Pradesh, though the Deputy Commissioner, Narsimhapur and that the Public Health Engineer had been moved to make this proposal by Shrimati Sarladevi Pathak, who was a candidate for the State Assembly from the Narsimhapur constituency. In support of his statement, the witness produced the file of the Janapada Sabha relating to the construction of the aforesaid wells (Ex. P-A). Some of the documents on this file had been already produced in evidence in the election petition case of Shri Birendrasingh—Vs.—Shrimati Sarla Devi Pathak, pending before the Election Tribunal, Narsimhapur. The documents were sent for and were duly produced by a clerk of that Tribunal and proved by the witness Chaudhary Girirajsingh. These four documents the original documents were returned to the Tribunal certified copies Ex. P-51 to P-53 have been placed in this record. (Exs. P-50 to P-53) corroborate the statement of this witness that Shrimati Sarla Devi had moved for construction of a well at Singhpur by the Janapada (along with wells at three other villages). It appears from the evidence of Chaudhary Girirajsingh that the Janapada Sabha undertakes the construction of four wells every year at villages where they are badly needed. The Government helps the construction of each well by contributing 75 per cent of the cost and the rest is contributed by the Janapada Sabha or the public. According to the case of the Petitioner, Shrimati Sarla Devi had made her proposal for the construction of the well at Singhpur in view of the approaching election, with the object of influencing the voters in favour of herself and the other Congress candidates. It appears that the letter of Shrimati Sarla Devi was written on the 13th January 1957 (*vide* Ex-52). Charka (P.W. 12) has deposed that Shrimati Sarla Devi and Shri Bagdi had visited the village Singhpur 4 or 5 days before the Sankrant day (14th January) (i.e. about the 10th January 1957), as stated already and that when they had asked the people to vote for the Congress, the Harijans of Singhpur had requested that a well should be constructed for them and said that if this was done they would vote for the Congress. It seems, therefore, quite likely that the above proposal was made by Shrimati Sarla Devi in her letter to the Deputy Commissioner dated 13th January 1957 (referred to in Ex. P-52) in view of the request made by the Harijans of the village Singhpur.

141. It appears from Ex. P-52 that the Chief Executive Officer, Janapada Sabha, had also moved for the construction of wells at Singhpur and three other villages (like Smt. Sarla Devi) in a letter dated 14th January 1957, from Camp Burman. It will be recalled in this connection that there was a meeting of Congress workers at Burman on the 13th January 1957, and according to the evidence of Gourishankar (P.W. 29) Government officers were also asked to attend this meeting. It seems, therefore, likely that the Chief Executive Officer

of the Janapada Sabha (—who is a Government Officer) was induced by Shrimati Sarla Devi [—who was present at the meeting of the Congress workers at Burman on 13th January 1957 according to this evidence of Gourishankar (P. W. 29)] to make this proposal fell through. The C.E.O.'s letter is now missing from the file. The reason probably is that the C.E.O. had made his proposal, with the expectation that there would be no difficulty in getting it sanctioned by the Janapada Sabha, but when he found the proposal to be opposed by Ch. Giriraj Singh he realised that he had exceeded his authority and was placed in a difficult position. His office opponents did not know about this letter Dt. 14th January 1957 (see note of M.P. Dube on page 5 of the file Ex. A).

142. The file of the Janpada Sabha relating to construction of wells (Ex. A) was produced from the custody of the Chief Executive Officer, Janapada Sabha, Narsimhapur. Giriraj Singh (P.W. 10) has deposed that he had found some correspondence in respect of the construction of wells to be missing and had, therefore, applied for a copy of the whole correspondence relating to the four wells, but the Chief Executive Officer, Janapada Sabha had refused to supply copies of the correspondence on the record relating to the four wells on the ground that there were no rules authorising supply of such copies. Giriraj Singh has produced the order to this effect received by him from the Chief Executive Officer (*vide* Ex. P—46). Giriraj Singh has deposed that there were letters from Shrimati Sarla Devi Pathak to the Chief Executive Officer and the Deputy Commissioner, Narsimhapur about the construction of wells for Harijans at Singhpur on the record but they were found missing when he had occasion to see the file after the month of March or April 1957.

143. Although there are no original letters or copies of letters of Shrimati Sarla Devi Pathak about the construction of wells at Singhpur, Sirmaria, Gidhwani and Kareli on the file Ex. A, it is clear from Ex. P—52 that the proposal about wells at these villages had been made to the Deputy Commissioner by Shrimati Sarla Devi in a letter dated 13th January 1957. There was also a proposal (see Ex. P—52) for construction of wells at the same villages in a letter dated 14th January 1957 by the Chief Executive Officer from Camp Burman as stated already; but no such letters are now to be found on the file Ex. A. Absence of these letters on the file corroborates the statement of Ch. Giriraj Singh that some documents were missing.

144. The Respondent in reply to paragraph 19 of the petition stated in his written statement dated the 21st July 1957, that the Petitioner's allegations in this paragraph were false and a deliberate misrepresentation. He admitted that in the course of the meeting at village Singhpur one of the grievances mentioned by the villagers was lack of water supply in the village, but he denied that he along with the villagers had selected a site for any well on the land of Vishwanath Singh, or any ceremony for the digging of the well as performed or any promise given as regards the construction of the well to the villagers to induce them to vote for the Congress. He stated further that the site for the well had been already selected some months before the election and was only shown by the villagers to the Respondent. These statements were repeated in an amended written statement filed on the 9th December 1957. But when the Respondent was examined as a witness in his defence on the latter date he gave a different version! He then deposed that he went to the village Singhpur on the 19th February 1957 at 3.00 P.M. and when he reached, Shrimati Sarla Devi was already there. Some 10 or 12 persons had gathered in the Bazar and they told the Respondent that a well was being dug at a distance of some 20 or 25 yards and that this was being done by the people with their own labour. He denies that there was any ceremony performed or coconut broken. He has further deposed that there was no public meeting and no promise was made by him or Shrimati Sarla Devi about the construction of any well, though they did ask the people to vote for the Congress. The Respondent says that he left Singhpur at about 4.00 P.M. while Shrimati Sarla Devi remained behind and that he did not know what happened afterwards.

145. The Respondent produced no evidence at all to rebut the evidence produced by the Petitioner in respect of his allegations in paragraph 19 of the petition about construction of a well at the village Singhpur and consequently the Petitioner's evidence stands un rebutted by any evidence except the statement made by the Respondent himself in the witness-box. The Respondent's deposition before the Tribunal is, however, in conflict with his written statement, as shown above. In the Respondent's reply to para 19 of the petition, in the written statement it is not denied that he and Shrimati Sarla Devi Pathak went to Singhpur on the 19th February 1957 and addressed a public meeting. The Respondent has, on the other hand,

stated in his deposition that he did not go to Singhpur on that date with Shrimati Sarla Devi but he went alone and that there was no public meeting! In the written statement he has admitted that the site was shown to him, but in his deposition he has stated that he did not see the site at all, though he was told that a site had been selected and the digging of the well had been started by the villagers with their own labour. These contradictions raise grave doubt as regards the truth of the Respondent's deposition before the Tribunal. If the villagers had no complaint to make about the well, there would have been no occasion for them to inform the respondent that a site had been selected for a well and the digging had already commenced. If it were true that the respondent had not gone with Shrimati Sarla Devi and addressed a public meeting at Singhpur as alleged in the petition and there was in fact no public meeting at all on that date, the Respondent might have been expected to deny these facts in his written statement. His failure to do so implies that it was admitted that he and Shrimati Sarla Devi had addressed a public meeting as alleged. The admission in the written statement that the site for the well was shown to him is very significant and suggests that the site was shown because the villagers wanted the Respondent and Shrimati Sarla Devi to help to get the well constructed.

146. After carefully considering the evidence produced by the Petitioner, the admissions, express or implied, made by the Respondent in his written statement and his attempt to give a different version before the Tribunal, I am of opinion that the version of the incident given by the witnesses of the Petitioner is true. If the well had been constructed with the help of funds of the Janapada Sabha as alleged on behalf of the Respondent, the fact could have been easily proved. Ch. Girirajsingh has deposed that the statement in Ex. P-13 that Rs. 532/8/- had been sanctioned by the Janapada Sabha for constructing a well at Singhpur was incorrect and that, as a matter of fact, the sum had been sanctioned for a hand-pump and not for a well. If this statement were untrue, it would have been easy enough to prove this by summoning the Chief Executive Officer with relevant documentary evidence; but no attempt has been made to do so. On the other hand the file Ex. A produced from the custody of the Chief Executive Officer and proved by the evidence of Ch. Girirajsingh fully supports his statement that the construction of wells at Singhpur (and 3 other villages) had been proposed by the Chief Executive Officer Janapada Sabha, as well as by the Public Health Engineer, Madhya Pradesh, but the proposal was opposed by Chaudhary Girirajsingh, who was Chairman of the P.W. Standing Committee of the Janapada Sabha, as he considered the construction of well at certain other villages to be urgently needed and his proposal was eventually sanctioned. It seems therefore, quite clear from the evidence on the record that no funds were sanctioned by the Janapada Sabha for the construction of a well at Singhpur. The statement of Ch. Girirajsingh that the item of Rs. 532/8/- for a well at Singhpur as shown in Ex. P-13 was a mistake, therefore appears to be true.

147. It has been already shown that Shrimati Sarladevi's letter dated 13th January 1957 was probably written by her in view of the representation made by the villagers of Singhpur to her and the Respondent, when they visited Singhpur 4 or 5 days before the Sankrant (i.e. about 10th January). If the letter was written by Shrimati Sarladevi under different circumstances and with a different object, it should have been easy to summon Shrimati Sarladevi as witness to elucidate the point. But it is significant that this lady was not produced as a witness, although she has figured so prominently in connection with the construction of a well at Singhpur. Not only this, but it is noteworthy that the Respondent seems to be anxious to dissociate himself from Shrimati Sarladevi, by deposing that she was already there when he visited Singhpur about 3.00 P.M. while Shrimati Sarladevi was still there and that he does not know what happened afterwards!

147-A. From the evidence of Patwari—Narmadaprasad (F.W. 4) it seems clear that a new well has been constructed recently at Singhpur. He has deposed that he did not know by whom this well was constructed and that this fact was to be ascertained and recorded by the Revenue Inspector. The new well having been constructed, the necessary funds for it must have been provided by some one. The Janapada Sabha certainly did not provide the funds as shown above. It seems, therefore, highly probable that arrangements for funds were made by Smt. Sarladevi Pathak and the Respondent to fulfil the promise given by them to the voters-probably with the expectation that the funds would be provided ultimately by the Government and the Janapada Sabha as a result of the recommendation made by Shrimati Sarladevi in her letter, dated 13th January 1957 to which reference has been made above.

147-B. In the end, reference may be made to one or two points which have not been mentioned above—Ch. Giriraj Singh has deposed that about 4 months before the election, Harijans of the village Singhpur had complained that the people of the village were not allowing them to take water from the wells in the village. This witness had gone to Singhpur to inquire into the complaint and brought about a compromise and the people of the village had agreed to allow Harijans to take water from the public wells. But it appears that the Harijans were still put to trouble and they wanted to have a separate well for themselves. It is well-known that in spite of the legislation in favour of Harijans, the prejudice against their use of public wells etc.—particularly in rural areas—still persists and it is, therefore, not at all surprising that the Harijans of Singhpur were keen to have a separate well for themselves. They apparently found a convenient opportunity to press this claim at the time of the election and the Respondent and Shrimati Sarladevi seem to have agreed to provide the well, to secure their votes. Smt. Sarladevi probably expected to have the funds provided by the Government and the Janapada Sabha without any difficulty and hence wrote her letter, dated 13th January 1957. But, as it happened, her proposal was opposed by Ch. Giriraj Singh. Ch. Giriraj Singh has deposed that he opposed the proposal, because, in his opinion, wells were urgently needed in four other villages selected by him. It is possible that Chaudhary Giriraj Singh being a supporter of the P.S.P., was influenced by this fact also in opposing the proposal of Smt. Sarladevi. Be that as it may, the fact remains that Ch. Giriraj Singh's proposal was accepted and no funds were sanctioned by the Janapada Sabha for the well at Singhpur and other villages as proposed by Smt. Sarladevi in her letter, dated 13th January, 1957.

147-C. After carefully considering the evidence on the record relating to the Petitioner's allegations in para. 19 of the petition, in all its aspects, I have come to the conclusion, that the Petitioner's case against the Respondent is established. To sum up, the following facts seem to be clearly proved against the Respondent by the evidence on record:—

- (1) The Respondent visited the village Singhpur 4 or 5 days before the Sankrant (14th January 1957) i.e. about the 10th January 1957 and asked the people to vote for the Congress. The Harijans of the village represented that a well for them was badly needed and said that they would vote for the Congress, if the well was provided. The Respondent promised to do so.
- (2) On 13th January 1957, Smt. Sarladevi wrote a letter to move the Government through the Deputy Commissioner for getting a well at Singhpur (along with 3 other villages) constructed by the Janapada Sabha. The Chief Executive Officer, Janapada Sabha wrote a similar letter from Camp Burman to the Deputy Commissioner on 14th January 1957 probably at the instance of Shrimati Sarladevi.
- (3) The Respondent again visited Singhpur 4 or 5 days before the polling date and again asked the people to vote for the Congress. The Harijans again pressed for the construction of the well. To assure them, the Respondent selected a site in consultation with them and performed the *Muhurat* ceremony of the construction of the well. The site was near the Abadi of Harijans and convenient for them. They were satisfied and voted for the Congress candidates.
- (4) The proposal of Smt. Sarladevi was opposed by Ch. Giriraj Singh (P.W. 10) who was Chairman of the P.W.D. Standing Committee of Janapada Sabha and fell through.
- (5) A new well has been constructed at Singhpur recently. The funds were clearly not provided by the Janapada Sabha. In view of all the circumstances, it seems highly probable that arrangements for funds were made at the instance of the Respondent with the expectation of getting necessary funds sanctioned later by Government and the Janapada Sabha, on the basis of Shrimati Sarladevi's proposal in her letter, dated 13th January 1957 to the Deputy Commissioner.
- (6) The Respondent made certain admissions in his written statement, but tried to go back on them and put forward a different version in his deposition. His conflicting statements cast grave doubt on his veracity.

- (7) The Petitioner's witnesses have not been shown to have any motive for giving false evidence against the Respondent. Those witnesses were not cross-examined; but the Respondent had the opportunity to cross-examine them but failed to avail himself of it, without any reasonable excuse. He cannot derive any advantage from his default or the default of his counsel. Petitioner's evidence must, therefore, be accepted as it stands. In view of the fact that the Petitioner's witnesses were not cross-examined, the Respondent was expected at least to produce evidence to rebut their testimony; but it is remarkable that he has not been able to produce a single witness in defence with respect to the issues under consideration.
- (8) For the sake of clarify, I may state that I give no finding in respect of the commission of this 'corrupt practice' so far as Shrimati Sarladevi is concerned. It appears that a separate petition is pending against her before the Tribunal at Narsimhapur, in which this corrupt practice is alleged. It will be for that Tribunal to give its finding on the evidence produced in that case. It should be, therefore understood that my findings are given on the evidence as it stands on the present record, as against the Respondent only. I did not consider the use of section 99 R.P. Act appropriate in this case, as there would have been risk of conflicting findings being given on different evidence in the two cases. I have, therefore, thought it preferable to give no finding at all against Shrimati Sarladevi in this case.

148 In view of all the above facts, I hold the allegations in paragraph 19 of the petition to be proved against the Respondent. Promise of the construction of a well in consideration of the Harjans voting for the Congress candidates, would clearly amount to a 'gratification' within the meaning of section 123(1) of the R.P. Act, 1951. I, therefore, find that the Respondent was guilty of a 'corrupt practice' under section 123(1) of the R.P. Act, 1951.

149. As the aforesaid 'corrupt practice' is proved to have been committed by the Respondent himself his election must be declared void under section 100(1)(b) of the R.P. Act, 1951.

150. *Issues No. 14(1) to 14(7)—Paragraph 20 of the petition.*—The next set of issues No. 14(1) to 14(7) relates to the conference of Adivasis at Madanpur held on 13th February 1957. It is stated in paragraph 20 of the petition that (i) this conference was addressed by Shrimati Sarla Devi Pathak, Shri Mushran, Shri K. L. Paliwal and Shri M. G. Wike, M.P. and these persons told the Adivasis that if they voted for the Congress, the Government would give them land, bullocks and a seat in the Assembly, and (ii) this promise was made with the consent of the Respondent or that at any rate in his interest, with the object of inducing the voters to vote for the Respondent. It was further alleged that the Respondent was guilty owing to this promise of offences under sections 123(1), 123(2) and 123(7) of the R.P. Act, 1951.

151. In his written statement, the Respondent admitted that the conference of the Adivasis was held at Madanpur on the 13th February 1957, as alleged and that the persons mentioned in para. 20 of the petition with the exception of Shri M. G. Wike were present. He, however, denied that these persons made any promise of the kind mentioned in that paragraph. He also denied that the speeches at the meeting were made with his consent or in his interest.

152. Only two witnesses were produced by the Petitioner with respect to the issues relating to the Madanpur conference viz. Dille (P.W. 7) and Harprasad (P.W. 14). Dille (P.W. 7) is a member of a Scheduled Tribe of Bhois and belongs to the village Singodi. He has deposed that he attended the conference of Adivasis some 10 or 12 days before the election day (25th February 1957) and that Shri Mushran, Smt. Sarladevi and Mangru Babu (M. G. Wike) addressed the meeting and said that if the Adivasis voted for the Congress they would be given land, bullocks, free grazing, timber etc. and that one of the Adivasis would be made a Member. His village is about 50 miles from Madanpur. No particular reason is given why he alone thought it necessary to attend the conference at Madanpur which is situated at a long distance from his village. He had never

gone to Madanpur or attended any other meeting of Adivasis before. He cannot give any other details of the speeches, beyond the promise of land, bullocks, etc. He stated that about 1,000 Adivasis were present at the meeting.

is a cultivator of the village Singhpur. He stated that he belongs to the Pradhan sect of Adivasis and that he attended the conference of Advasis at Madanpur on the 13th February 1957. According to his evidence, Shri Mushran, Deputy Minister for Adivasis (i.e. for Tribal Welfare); Shrimati Sarla Devi Pathak; Shri Kishorilal and one Shri Wike leader of Adivasis were present and spoke in the meeting. Address is said to have been presented to Shri Mushran and he said in the course of his speech that the Adivasis were very poor and he wanted to raise their status by securing land, bullocks, grazing facilities, etc. for them and that one of the Advasis would be made a member of the Assembly. But Shri Mushran said that all this could be done only if the Adivasis voted for the Congress. Shrimati Sarla Devi Pathak also made a speech to the same effect and promised to have the land of Adivasis restored to them from Mahajans. Kishorilal Paliwal and Wike also made similar speeches and asked the people to vote for the Congress. Singhpur, village of the witness, is some forty miles from Madanpur and no particular reason is given for his going all the way to attend this conference.

154. The above evidence seems to be altogether inadequate to prove the allegations of the Petitioner. The conference of Adivasis is said to have been attended by some 1,000 persons, but no Adivasis from Madanpur or neighbouring villages have been produced as witnesses. The two witnesses produced are illiterate and it is doubtful if they were able to follow and understand the exact import of the speeches. Uplift of the scheduled tribes is one of the directive principles of the Indian Constitution (*vide* Art. 46 of the Constitution of India) and the speeches of the above mentioned persons may have been nothing more than an announcement of the policy of the Congress Party for the upliftment of Adivasis in conformity with the Constitution. If so, they would seem to fall within the proviso (b) of section 123(2) of the R.P. Act and would not, therefore, constitute any corrupt practice. The Respondent was admittedly not present and there is no evidence on the record to show that the speeches in question were made with his consent.

155. The Respondent has produced Shri Phulchand Gupta (R.W. 8) and his witness. He was present at the meeting to assist the Chairman of the meeting, who was not acquainted with the procedure to be followed at such conferences. He has stated that the conference was purely a social conference which had been convened for promoting the social upliftment of the Adivasis and all the speeches at the conference were confined to that subject. He has produced a printed copy of the speech of the Chairman of the meeting. (Ex. R-1—which had been prepared by him in consultation with the Chairman) and it supports his statement that the conference was a social and not a political one and had nothing to do with the election. He stated definitely that there were no speeches in connection with the election. He also denied that Shri Wike was present at the meeting. The witness is a congress worker. But his evidence supported by the document Ex. R-1 seems straight-forward and reliable.

156. Shri Wike (R.W. 10) was produced as a witness for the Respondent and he has deposed that he was not present at the Adivasi conference. He is a respectable witness and his statement, which there seems to be no good reason to doubt, gives a lie to the statement of the Petitioner's witness that he was present and spoke at the conference.

157. As regards Issue No. 14(1), it is admitted in the written statement of the Respondent that there was an Adivasi conference at Madanpur on the 13th February 1957 and that it was addressed by the persons named in para 20 of the petition except Shri Wike. I, therefore, find accordingly this issue in favour of the petitioner except in respect of Shri Wike's address. As regards the remaining issues I hold the Petitioner's evidence to be not reliable and I, therefore, decide them against the Petitioner and find that the 'corrupt practice' alleged in para 20 of the petition is not proved.

158. *Issues No. 15(1) to 15(6)—Paragraph 21 of the petition:*—Issues No. 15(1) to 15(6) relate to the meeting of Adivasis, alleged to have been held at Bouchhar on the 22nd February 1957 (*vide* para 21 of the petition). According to the allegations of the petitioner, Shri Mushran, Deputy Minister, the Respondent and Shri Wike were present and addressed this meeting. In the course of his speech Shri Wike advised the Adivasis, who were working for the candidates of the Praja Socialist Party and ceased to work on their lands and told them that when the land fell barren owing to lack of cultivation, it would be distributed amongst the Adivasis. The above advice is said to have been given by Shri Wike with the consent of the Respondent to induce the Adivasi voters to vote for the Respondent and the result of the election is alleged to have been materially affected thereby.

159. In support of the above allegations, the Petitioner has produced three witnesses *viz.* Shankarlal (P.W. 21), Halka (P.W. 22) and Mehgu (P.W. 23). Shankarlal and Mehgu belong to Bouchhar. Shankarlal who is a cultivator of Bouchhar stated that he was looking after the loud speaker, belonging to one Koksingh, which had been borrowed for the meeting. According to him (as well as the other witnesses) Shri Mushran and Shri Bagdi only advised the people to vote for Congress. Shankarlal states that Shri Wike advised the Adivasis to give up cultivating lands of big landowners belonging to the Praja Socialist Party and that when the land fell barren, it would be distributed amongst the adivasis. He stated that there were only 2 big landowners in his village, who were members of the Praja Socialist Party *viz.* Udarsingh and Daulatsingh. In a previous statement with which he was confronted (Ex. P-19) he had said that Udarsingh and Daulatsingh were not members of the P.S.P. Shri Wike had advised the Adivasis to give up cultivating lands of big landowners of the P.S.P. only, but he stated that they gave up cultivating lands of all Lodhis including himself, though he owns only 7 acres of land. Halka (P.W. 22) who is an Adivasi says that Shri Wike advised people to cease to cultivate lands of all 'Jhhopdi Chhap Wallas' (*i.e.* members of the Praja Socialist Party). He stated at first that he gave up cultivating lands of the members of the P.S.P. as well as of the Congress, but contradicted himself later by stating that he worked for any body who engaged him. The third witness Mehgu (P.W. 23) is an 'Adivasi' labourer of Bauchhar. He deposed that Shri Wike advised Adivasis to give up cultivating lands of all Patels or big landowners—whether of the Praja Socialist Party or of any other party. He says that Adivasis had stopped work for 2 or 3 months but had started working again. He stated further that when he began to work again he was out-casted by his community.

160. The evidence of the above witnesses is conflicting and unsatisfactory. It seems very doubtful, if these ignorant cultivators were able to follow and understand the true import of the speech of Shri Wike at all. According to the Petition Shri Wike had advised the Adivasis not to cultivate lands of the candidates of the Praja Socialist Party. It does not appear from the evidence who these candidates were, how much land was owned by them, how much of it was cultivated by Adivasis and what was the number of Adivasis who cultivated such lands. It is also not explained how the proprietary rights were to be abolished even if the land fell barren owing to lack of cultivation for some time.

161. The Respondent denied in his written statement that there was any meeting at Bouchhar on the 22nd February 1957, or that Shri Wike gave any such advice as is alleged in para 21 of the petition. Shri Wike (R.W. 10) was produced as a witness. He has deposed that he visited Bouchhar only once between 9th and 12th February and he did not go there again.

162. The Petitioner has entirely failed to prove his allegations by any reliable evidence. I decide all the issues No. 15(1) to 15(6) against him and hold that the 'corrupt practice' alleged in paragraph 21 of the petition is not proved.

163. Issues No. 17(1) to 17(5)—*paragraph 25 of the petition.*—Issues No. 17(1) to 17(5) arise out of the allegation in paragraph 25 of the petition. These allegations in paragraph 25, briefly stated, are—

- (i) that 130 special permits were issued to the Kisans (agriculturists) by the Tahsildar, Narsimhapur between 1st February 1957, to 24th February 1957, (i.e. during the three weeks preceding the date of polling);
- (ii) That this was done at the instance of the Deputy Minister, Shri Mushran, Shrimati Sarla Devi Pathak, the Respondent and Shri D. P. Pathak, President of the District Congress Committee; and
- (iii) that all this was done to influence the voters to vote for the Congress candidates.

The Respondent has denied any knowledge about the issue of these 'special permits' and has deposed that he had no concern with them and had no talk with the Tahsildar, Deputy Commissioner, etc. about these permits.

164. The Petitioner has no personal knowledge about these permits. He has stated that he received information about them from A. R. Faruque, Th. Shashibhushan Singh (P.S.P. candidate for State Assembly from the Gotegaon constituency) and Shri M. S. Killedar (P.W.P. candidate for the State Assembly from the Narsimhapur constituency). Out of these only Shri M. S. Killedar (P.W. 28) has been produced as a witness. This witness has deposed that he came to know from the residents of certain villages that permits for timber had been illegally issued. He then made an application for inspection of the cases relating to these special permits. The application was rejected by the Tahsildar, but was allowed later on by the Deputy Commissioner and he then got certified copies of the applications and orders in some cases.

165. It may be stated here that these so-called 'special permits' were for timber for construction of new houses. Shri Mohammad Akbar, Collector of Narsimhapur (P.W. 31) was produced as a witness. He has deposed that the permits were issued in pursuance of his circular order CHH dated 15th December 1956, and the circular order itself was issued in accordance with the instructions contained in the letter from the Government (Land Reforms Department) dated 16th October 1956. This letter (printed copy) had been produced in evidence in Election Case No. 2 of 1957, tried by this Tribunal and the same was proved in this case. The letter is marked as Ex. P-5 in that case and a true copy of the letter has been placed on the record of this case for facility of refund (See Ex. P-X) as no extra copy was with the witness. The Collector was also examined as the Court witness (C.W. 1) in this as well as in Election Case No. 2 of 1957, referred to above as certain important points as regards the procedure adopted in respect of these 'special permits' were not brought out clearly at first. It will appear from paragraph 29 of the Government letter (Land Reforms Department) dated 16th October 1956, referred to above, that issue of permits for timber for construction of houses was not covered by the instructions in that letter and the issue of such permits was to continue under the old rules as before. The issue of such permits is regulated by the rules in para 2 of the Circular CHH dated 15th December 1956, issued by the Collector and these rules are based on those already in force. These old rules are given in a letter from Government dated 29th October 1956, which is marked as (Ex. C.W. 5/1).

166. It appears that there was great scarcity of 'Nistar' * i.e., fuel, timber, etc. required for domestic purposes after the abolition of *malguzari* in 1953 and the

'Nistar'*.—According to the rules in paragraph 104, page 121 forest manual Vol. I (1950) 'Nistar' ordinarily means and includes (a) Dry wood fit for fuel, (b) Bamboo, (c) Grass, (d) Thorns, etc. required for domestic use and not for sale for wasteful use. Sections 219 to 222 of the Madhya Pradesh Land Revenue Code 1954 describe the 'Nistar Rights' which are to be embodied in 'Nistar Patrahs' to be prepared by Deputy Commissioner of Districts. The policy of the Madhya Pradesh Government regarding 'Nistar and Grazing facilities in Madhya Pradesh' is explained in a booklet published by the M.P. Government. Copy of the booklet (marked as Ex. C.W. 5p3) has been placed on this record. It can be referred to as a public document under section 78 of the Indian Evidence Act.

Government had to regulate its supply from time to time for the convenience of the public. According to the instructions in Government letter dated 16th October 1956, referred to above, a new scheme was to come into force from 1st February 1957, under which the regulation of supply of Nistar was to be left mostly to the Gram Sabha, Gram Panchayats, but as stated above, permits for timber for construction of new houses were to be issued by the Tahsildar and higher Revenue Officers.

167. According to the allegations in para. 25 of the petition, 130 special permits were issued by the Tahsildar between 1st February 1957, and 24th February 1957, and details of these were given in Annexure F to the petition. Records of these cases were sent for under Order XIII r. 10 C.P.C., as production of copies of these records would have involved unnecessary delay and expense. The Petitioner has examined witnesses with respect to some of those cases and the procedure adopted therein generally has also been examined. A chart has been prepared giving the more important details about these cases and the irregularities noticed therein and has been attached to this Order as 'Appendix A' for facility of reference.

168. I now proceed to discuss the evidence relating to the issue of those permits. The evidence may be classified as follows and will be discussed in that order:

- (a) Statement of the witnesses Gourishankar Kathal (P.W. 29), M. S. Killedar (P.W. 28) about the meeting of Congress workers at the village Burman on 13th January 1957;
- (b) Issue of special permits at the instance of Shri S. N. Mushran (Congress candidate for the State Assembly from Gotegaon constituency);
- (c) Issue of special permits at the instance of Shri D. P. Pathak, President of the District Congress Committee, Narsimhapur;
- (d) Issue of special permits at the instance of Shri A. N. Mushran, Brother of Shri S. N. Mushran and one of his principal workers at the last election;
- (e) Letters or recommendations of Shri A. N. Mushran in connection with the issue of permits;
- (f) Material irregularities noticed in the procedure of the Tahsildar in connection with the issue of the permits and the inference to be drawn therefrom;
- (g) The evidence of the Tahsildar (Shri K. S. Rao—P.W. 32 and C.W. 2) and the Collector Shri Mohammad Akbar (P.W. 31 and C.W.1).

(a) 168. The evidence of Gourishankar (P.W. 29) has been already referred to in connection with other issues. He used to be an active member of the Congress Party, but left it about 18th January and joined the P.S.P. Before that date, a meeting of the Congress Party was held at the village Burman on the 13th January 1957, on the occasion of the *Sankranti* fair, to consider ways and means for furthering the prospects of the Congress candidates at the forthcoming election. Shri Mushran, Deputy Minister; Shrimati Sarla Devi Pathak, Shri D. P. Pathak, Pleader and President, District Congress Committee and other prominent members of the Congress party were present at this meeting. Gourishankar (P.W. 29) was also present. He has produced the invitation card (Ex. P-22), which he received for this meeting. He stated that the question of providing facilities for Nistar was engaging the attention of the Congress party for some time as it was feared that unless some effective steps were taken to provide such facilities, the people of this part of the Province, who were dissatisfied on account of scarcity of Nistar since the abolition of *malguzari* in 1933, would not vote for the Congress. Resolutions had been already passed by the District Congress Committee to bring the matter to the notice of the Government. On the 1st February 1957, the revised scheme for supply of Nistar was to come into force, as will appear from Government letter dated 16th October 1956, (copy marked as Ex. P-10) and Shri Mushran announced that he had given instructions to the District Officers to issue permits for Nistar and that if any body found any difficulty in the matter, he should see Shri D. P. Pathak and he would arrange to get the necessary permits issued by the Tahsildar. Gourishankar states that the Respondent, Shri Bagdi was also present at this meeting. Actually the meeting was of the Congress Party; but Gourishankar stated that the Collector and the Tahsildar of Narsimhapur and some other Government officers were present at

this meeting. Shri M. S. Killedar (P.W. 28), who had also gone to Burman for the meeting of his Party (P.S.P.), stated that he too saw from outside that the Deputy Commissioner and Tahsildar were present at the Congress meeting.

(b) 169. Two witnesses have been produced by the Petitioner, viz. Mullusingh (P.W. 49) and Sunderlal (P.W. 50) who have deposed that they got permits for 'timber' with the help of Shri S. N. Mushran. Mullusingh says that he had approached Shri Mushran some two months before the election for a permit for timber which was required for his house, which was under construction and he was told that he would get it later. He approached Shri Mushran again when he visited his village Theml some 20 days before the election and Shri Mushran then gave him a letter addressed to Shri Pathak, Pleader of Narsimhapur. He accordingly took the letter to Shri Pathak, who accompanied him to the Tahsildar's Court and spoke to him in English and thereafter his application was granted and a permit was given to him. Mullusingh has deposed that when the letter was given to him by Shri Mushran, he asked him to vote for the Congress; but no such statement was made by him when he appeared in another Election case before this Tribunal (Election Case No. 2 of 1957—Shri K. L. Tiwari Vs. Shri S. N. Mushran)—see Ex. P-4 (certified copy of his previous statement with which he was confronted). Similarly, Mullusingh's statement in this case that Shri Pathak spoke to the Tahsildar in English is not to be found in the previous statement. The application of Mullusingh was in order and was recommended by the Sarpanch of the Gram Panchayat and he was entitled to obtain the permit according to the rules. The material irregularity noticeable in the procedure in this case was that Mullusingh was granted a permit for timber of the market value of Rs. 399 while the Tahsildar was empowered to grant permits for timber of market value upto Rs. 200 only. The Tahsildar when questioned on this point, admitted this irregularity, but explained that he was under the wrong impression that he could grant permits provided the price actually charged was below Rs. 200. In the present instance, although the market value of the timber for which permit was given to Mullusingh was Rs. 399, the actual amount paid by Mullusingh was only Rs. 199-8-0 as Mullusingh was entitled to obtain the timber at half the market price according to the rules in Circular CHH dated 15th December 1956 (Ex. P-25). The Tahsildar appears to have granted permits of market value exceeding Rs. 200 in some other cases also under this wrong impression and come to know his mistake only when it was pointed out to him later by the Deputy Commissioner, when the mistake came to his notice sometime in April 1957. Sunderlal (P.W. 50) is a Kotwar of village Kamti. He says that he had made an application to the Tahsildar, Narsimhapur for timber for his house in January 1957 and had gone to his court again to inquire about it in February 1957. He was told by the Tahsildar that issue of permits had been stopped. He found, however, that other persons were getting permits. He, therefore, approached Shri Mushran, Deputy Minister, who was in Narsimhapur at the time and whom he knew. He told Shri Mushran what had happened and the Deputy Minister assured him that he would be given a permit. Sunderlal then went to the Tahsildar's court next day and obtained the permit. The record of Sunderlal's application, however, does not show that the application of Sunderlal was made in January. The application is dated Nil and it was sanctioned on 9th February 1957. There is no order of the Tahsildar to the effect that issue of permits had been stopped. The witness also does not say that there was any mention of giving votes for the Congress candidates, when Shri Mushran gave the assurance to him that he would be given a permit. It is not known what action, if any, was taken by Shri Mushran. It is possible that Shri Mushran may have simply inquired through some one why Sunderlal was not being given a permit when he was entitled to get it according to rules and this may have served his purpose.

170. In view of all the facts referred to above, the evidence of Mullusingh and Sunderlal does not seem to be sufficiently reliable or adequate for a finding that permits were given to these witnesses on the recommendation of Shri Mushran.

(c) 171. Six witnesses have been produced as regards the assistance alleged to have been given by Shri D. P. Pathak to persons who were in need of permits for timber for construction or repair of their houses. These witnesses are Ramsaransingh (P.W. 39), Kuber (P.W. 40), Babulal (P.W. 41), Kailasgir (P.W. 42), Khumansingh (P.W. 45) and Manmohanlal (P.W. 54). Shri D. P. Pathak is a practising Pleader of Narsimhapur. He is the President of the District Congress Committee, Narsimhapur and husband of Shrimati Sarla Devi, Congress candidate for Assembly from Narsimhapur constituency. According to the evidence

of Gourishankar (P.W. 29), Shri S. N. Mushran, the Deputy Minister had stated at the Congress meeting at Burman on the 13th January 1957, that if any person found any difficulty in obtaining 'Nistar', they should approach Shri D. P. Pathak and he would get the necessary permits issued by the Tahsildar. The evidence of the above six witnesses supports the evidence of Gourishankar in this respect.

172. Khumansingh (P.W. 45), who used to be a member of the Congress and had been President of the District Congress Committee at one time has deposed that Shri D. P. Pathak visited his village Amgaon in the first week of January 1957. He asked the people to vote for the Congress, and inquired if the people there had any difficulties. The people of the village complained that there was great difficulty in getting 'Nistar'. Shri Pathak then assured the people that they would get it soon. Soon afterwards permit-books were received by the Patel and people began to get Nistar.

173. Ramsaransingh (P.W. 39) is a cultivator of 'Pipaira'. His joint family owns about 100 acres of land. He was a Congress worker. He had applied for timber for construction of a house 10 or 15 days before the election date. However, he got no orders for 2 or 3 days. He came to know that permits could be obtained with the assistance of Shri D. P. Pathak. He accordingly went to see him and asked for his help. Shri Pathak asked him to work for the Congress. Ramsaransingh said he was already doing so. Shri Pathak then asked him to work harder and promised that he would be given a permit. Shri Pathak then accompanied the witness to the Tahsildar and spoke to him and the Tahsildar sanctioned the permit on payment of the required amount within 3 days. The witness was unable to deposit the amount within 3 days as he was very busy with Congress work during the period. When he went to Tahsildar after the period, the Tahsildar refused to grant the permit, as the time allowed had expired. The witness, approached Shri Pathak again. Shri Pathak asked him not to worry and carry on his Congress work and assured him that the permits would be issued after the polling date. After the polling date, the witness saw Shri Pathak again and he then accompanied him to the Tahsildar and he spoke to him. Eventually he got the permit, about six weeks after the election. The witness has stated that he was a Congress worker and would have worked for the Congress in any case. But it seems clear from the evidence that Shri Pathak assisted him in getting the permit after the election, as a reward for the hard work he had been asked to do. Kuber (P.W. 40) and Babulal (41) belong to the village Kapoori. The first witness is a landowner owning about 50 acres of land while the second is a Kotwar of the village. Both had applied for timber for construction of their houses and learnt from Komalsingh of their village that permits could be obtained from the Tahsildar with the assistance of Shri Pathak. Both of them accordingly approached him. Shri Pathak asked them to vote for the Congress and secure other votes. On their agreeing to do so, Shri Pathak accompanied them to the Tahsildar's court and spoke to him and thereafter these witnesses were granted permits.

174. The next witness Kailasgir (P.W. 42) is a landowner of the village Rehli owning about 70 to 80 acres of land. He has also a small house at Narsimhapur. He has deposed that some 4-6 days before the election when he was at Narsimhapur, Shri D. P. Pathak and his wife Shrimati Sarla Devi went to see him at his house one evening and inquired from him about the election prospects in his village Rehli. He told them that the people of his village were inclined towards the P.S.P., as the people were experiencing great difficulty in connection with 'Nistar' and Shrimati Sarla Devi, who had been a member of the State Assembly for 5 years had done nothing to give relief to the public. Kailasgir himself was in need of timber for repairs of his house and told Shri Pathak about it. Shri Pathak then asked him to come to the Kutchery and see him next day. The witness did so and presented an application to the Tahsildar as advised by Shri Pathak. Shri Pathak accompanied him to the Court of the Tahsildar and spoke to the Tahsildar. The Tahsildar then told him that a permit would be given to him on payment of Rs. 105. Shri Pathak, however, asked him to work for the Congress and told him that the permit would be issued after the election. The witness told him that he had already signed some paper giving his consent to work as Polling Agent for Shri Killedar, the P.S.P. candidate. Shri Pathak told him that he should work for a short time just to show that he was present. Kailasgir accordingly did some work for the Congress and merely went to the Polling Station for a short time in the evening on the election day. He found that another person was already working as an agent for Shri Killedar and so he returned soon. The witness was given a permit some 4-6 days after the election.

175. The last witness Manmohanlal also belongs to the village Rehli. He needed timber for construction of a new house and had applied to the Tahsildar on 1st February, 1957. On the 12th February 1957, Tahsildar told him that a permit would be given to him on payment of Rs. 118/2/-. He went to the Tahsildar's Court to deposit the amount the next day, but was told that a complaint had been received against him from Subhakaran Lunawat and hence a permit could not be given to him. He then learnt from some persons outside the Court that permits could be obtained with the help of Shri Pathak, Pleader. He saw Shri Pathak on that very day in the Kutchery. Shri Pathak asked him to vote and secure votes for the Congress. The witness agreed to do so (though he says that actually he did not work), upon which Shri Pathak accompanied him to the Tahsildar's court and spoke to him in English. The Tahsildar then told him that permit would be given to him and he got it on the 16th February.

176. As there was *prima facie* evidence as detailed above to show that Shri D. P. Pathak was assisting people to obtain permits for timber from the Tahsildar in consideration of their agreeing to vote and secure votes for the Congress and was thus party to a corrupt practice under section 123(1) of the R.P. Act 1951, notice was issued to him under section 99 of that Act and an opportunity was given to cross-examine the above witnesses and to produce his defence. Shri Pathak cross-examined the witnesses who had deposed against him and has also gone into the witness-box and produced some witnesses in his defence.

177. Further cross-examination of the above mentioned witnesses who had deposed against Shri Pathak has shown that they are mostly interested. Some of them are closely connected with Shri Mahendra Singh Killedar, P.S.P. candidate for Assembly from the Narsimhapur constituency or are otherwise connected with the P.S.P. Kuber (P.W. 40) has admitted that Narendrasingh's (of Khurpa) sister is married to his brother Premsingh and the daughter of Raghunathsingh Killedar who was a brother of above mentioned Mahendrasingh Killedar, is married to Narendrasingh Babulal (P.W. 41) is a Kotwar of the village Kapoori of which Premsingh is a Patel and is likely to be under the latter's influence. There are some material discrepancies also between the statements of these witnesses before this Tribunal and the Tribunal at Narsimhapur which were disclosed when they were confronted with the latter statements (see Exs. N.A. 2 and 3). Both these witnesses have said that they learned from one Komalsingh of their village that permits could be obtained with the assistance of Shri Pathak but Komalsingh has not been produced as a witness. Both these witnesses state that they did not tell any one that they had obtained these permits with the help of Shri Pathak and it is thus not clear how their names were ascertained by the Petitioner.

178. Ramsaransingh is a Jat belonging to the same caste as the P.S.P. candidate Mahendrasingh Killedar, but has not been shown to be related to him. Shri Pathak has, however, deposed that he is closely associated with the Killedar family and was principal host at a Party given on the occasion of the marriage of Raghunath Singh Killedar's daughter. Shri G. P. Tiwari, Pleader, who is working as Junior Pleader with Shri Pathak has deposed that both Ramsaransingh and Kailasgir are P.S.P. workers and that Ramsaransingh was managing the Party given at the time of the marriage of Raghunathsingh's daughter. Kailasgir is on his own showing a sympathiser of P.S.P. He admits that he had agreed to work as a Polling agent for Mahendra Singh Killedar. He has deposed that he agreed to work for the Congress, as desired by Shri Pathak, in order to obtain a permit for timber with his help and went to the Polling Station on the election day only for a very short time. But Gulabchand (N. A. W. 4), who was a polling agent for Shrimati Sarla Devi Pathak has deposed that Kailasgir worked as a polling agent for Mahendra Singh Killedar and was present at the polling station throughout the day on the election date. He is a respectable witness, but is interested as he was working for Shrimati Sarla Devi Pathak, wife of Shri Pathak.

179. Manmohan Swami on being further cross-examined, first deposed that he was not a worker for the P.S.P., but on his attention being drawn to his statement before the Election Tribunal, Narsimhapur, admitted that he did work for that Party in 1957 and used to attend its meetings at times.

180. It appears from the record of the application of Babulal that he presented his application for a permit on the 14th February, 1957. Kailasgir's application is dated 20th February. Manmohan Swami was given an order for a permit on

the 13th February. According to these witnesses, they went to Shri Pathak for help on these dates. But Shri Pathak has stated that he was out of Narsimhapur on these dates.

181. Shri Tiwari, who was working as a Junior Pleader with Shri Pathak has deposed that Shri Pathak was out of Narsimhapur on 13th, 14th February 1957 and he (Tiwari) attended to his cases in Courts. He has produced his diary in support of his statement. Shri Pathak has also adduced other witnesses to show that he was absent from Narsimhapur on the 13th and 14th February 1957.

182. Subhkaran Lunawat (N.A.W.6), Secretary of the District Congress Committee has deposed that he had gone to the Court of the Tahsildar, Narsimhapur on the 13th February 1957. After attending the Court he met Shri Pathak about noon. Shri Pathak had gone out in a jeep car in the morning of that day as he had to go to a village Kerpani, but he had to come back as the road had become impassable owing to heavy rains. He then went by a longer route to Kerpani. Subhkaran was with him and drove the car as the driver was ill. They returned at night from Kerpani. Turab Mohd. Khan (N.A.W. 3) has deposed that Shri Pathak had gone out on tour with Seth Govinddas, President of the Provincial Congress Committee on the 14th Feb. 1957 and was out the whole day. He had accompanied Shri Pathak and has deposed that Shri Pathak returned to Narsimhapur at night. As regards the 20th February, Shri Pathak has deposed that he was throughout that day with Shri Sidhwa, a Deputy Minister of the Central Government, who was on a visit to Narsimhapur on that day and did not go to court at all. Shri Tiwari, his Junior has corroborated this statement and produced entries in his diary in support of it.

183. Mullusingh (P.W. 49) had deposed that he brought a letter to Shri Pathak from Shri Mushran and obtained a permit through him. Mullusingh belongs to the village Theml. Shri Pathak has produced Muratsingh Patel of Theml (N.A.W. 5) as his witness to rebut the statement of Mullusingh. Muratsingh has deposed that Mullusingh belongs to the P.S.P. and Thakur Shashibhushansingh, P.S.P. candidate for Gotegaon constituency was putting up with him. It has been also pointed out above, that Mullusingh has tried to make additions to the statement e.g. that Shri Mushran had asked him to vote for the Congress, while there was no such statement in his previous deposition before this very Tribunal in another Election case (No. 2 of 1957) with which he was confronted.

184. It will appear from the above, that almost all the witnesses who have deposed against Shri Pathak are interested. Some of them have made conflicting statements on material points and the defence evidence referred to above thrown further doubt on their testimony. I, therefore, hold that the testimony of these witnesses is not trustworthy and Shri Pathak cannot be held to be proved to be guilty of any 'corrupt practice' on the basis of such evidence. I therefore, find accordingly on this point.

(d) & (e) 185. There is a certain amount of evidence on the record to show that Shri A. N. Mushran brother of Shri S. N. Mushran (Congress candidate from Gotegaon constituency) and one of his principal workers at the last election was also assisting people to get permits for timber. Notice was issued to Shri A. N. Mushran also under section 99 of the R.P. Act. He has also cross-examined witnesses who had deposed against him.

186. Tarachand (P.W.20), teacher in the Janapada School in the village Pindral has alleged that he was assisted by Shri A. N. Mushran, Pleader, in obtaining a permit for timber from the Tahsildar, Narsimhapur. His evidence has been already discussed in detail while dealing with Issue No. 12(1) to 12(4). Shri A. N. Mushran who was examined as a witness (P.W.53) has admitted that he knows Tarachand but denied that he approached him for assistance in obtaining a permit for timber or that he gave any such assistance. For reasons already given while discussing the aforesaid issues, the evidence of Tarachand, cannot be safely accepted without corroboration in material particulars. No such corroboration has been produced in the present case.

187. Govindsingh Patel of Dond (P.W.51) has deposed that two persons named Malkhansingh and Halke Gond of his village, who had gone to the village Mungwani brought a letter from Shri A. N. Mushran asking him to give the people of his village Nistar according to rules. The witness says that he had never refused to give 'Nistar' to the aforesaid persons and he does not know why those persons should have approached Shri A. N. Mushran and brought a letter from him. The letter, was produced in Election Case No. 2 of 1957 of this Court and was marked therein as Ex. C.1. It was put to the witness and he identified it as the letter which had been received by him.

188. The letter Ex. C. 1 was admitted by Shri A. N. Mushran to be in his handwriting. He explained that as the persons from Dond complained to him and pressed him to write the letter, he did so merely to oblige them, as a public worker. The letter is dated 15th February 1957 and it is admitted that Shri A. N. Mushran was then working for his brother Shri S. N. Mushran in connection with his election. But the letter merely asks the Patel of Dond to issue permits according to rules. There is no evidence on the record to show whether the persons who were given the letter were asked to vote for the Congress.

189. Another piece of evidence consisted of a recommendation made by Shri A. N. Mushran on an application for timber to the Tahsildar by one Mansingh of Bagaspur (special permit case No. 32 of 1956-57). The application of Mansingh on the record of this case bears an endorsement by Shri A. N. Mushran as follows:

"Forwarded to the Tahsildar, Narsimhapur for favour of sanction."

Shri A. N. Mushran has admitted the endorsement and has stated that he made this endorsement also only as a responsible public worker and sent Mansingh to the Tahsildar with it. The application was duly recommended by the Gram Panchayat, Patel, etc. and the necessity of a recommendation by Shri A. N. Mushran is not by any means clear,—unless the applicant thought that the recommendation of Shri A. N. Mushran would help him to obtain the permit easily. It is noteworthy that Shri A. N. Mushran made his endorsement on the application itself as though he were a person with some authority. However, the endorsement was made before Shri A. N. Mushran started working in connection with his brother's election and will not therefore amount to any 'corrupt practice' under the election law. In view of all the facts stated above, the evidence against Shri A. N. Mushran also does not appear to be sufficient to hold him guilty of any 'corrupt practice'. I find accordingly on this point.

190. It is alleged in para 25 of the petition that the 'special permits for timber' were issued to Kisans by the Tahsildar, Narsimhapur, contrary to all rules and practice of Land Revenue Code and Forest Code. An examination of the records of these cases and the evidence of the Tahsildar himself, who was examined as a witness by the Petitioner (P.W.32) and also examined as a Court witness (C.W.2) to elucidate certain points, lends considerable support to this allegation. It has been already stated above that a chart has been prepared under my instructions giving the more important details of these cases and has been attached to this order as Appendix A. I have noted therein the more important material irregularities apparent from the records. The Tahsildar was also examined with reference to them and he was not able to offer any satisfactory explanation. These material irregularities are:—

- (a) The Tahsildar has issued permits for timber exceeding Rs. 200 in market value in 30 cases while had powers to issue permits for timber upto the market value of Rs. 200 only.
- (b) Permits have been issued for repairs of houses in 16 cases, while he had no power to issue such permits at all.
- (c) Permits have been issued in some 15 cases merely on the report of the Patwari, without any recommendation from Gram Sabhas.
- (d) No attention has been paid to the prescribed scale as regards the quantity of timber to be allowed, in the second part of circular CHH dated 15th December 1956 of the Collector (Ex. P 25) on the basis of which these permits were issued.
- (e) No inquiry was made as regards the availability of timber, as required by the rules in the above circular.

191. As regards (a), the Tahsildar's explanation was that he was under a wrong impression that he could issue permits so long as the price to be realised (which was at half rate) did not exceed Rs. 200 and that he discovered the mistake only when it was pointed out to him later by the Collector. This explanation can hardly be considered satisfactory as the wording of the rules on the point is quite clear.

192. With respect to (b), the Tahsildar stated that he merely recorded the statement (only a typed form seems to have been used for the purpose) and if the Petitioner said he wanted timber for construction of a house (*makan banane ke liye*) he was given a permit! He apparently did not care even to read the application in which it was clearly stated that the timber was required for repairs of houses. This was flagrant disregard of the rules.

193. As regards (c), the Tahsildar's explanation is that the Patwari's recommendation was accepted if there was no Gram Sabha in the village. But there is no authority for this in the rules. Moreover, there is nothing on the record to show that the Patwari's recommendation was accepted because there was no Gram Sabha in the village. As a matter of fact it appears from the Government's letter dated 16th October 1956 (on which the Collector's circular CHH dated 15th December, 1956 was based) that the Gram Sabhas were to be formed by 30th November 1956 in all the villages and the presumption is that they were so formed.

(d) 194. The scale as regards the quantity to be allowed as prescribed in Part II of the Circular CHH dated 15th December 1956, seems to have been simply ignored. No attempt seems to have been made to ascertain what were the dimensions of the house and the quality of timber which could be allowed according to the prescribed scale.

(e) 195. No independent inquiry was made as regards the availability of timber, though such inquiry seems to be required by the rules.

196. In addition to the above, there are various other minor irregularities e.g. dates of presentation are often not given; nor are any dates fixed for appearance of applicants. Cases seem to have been taken up suddenly on any dates, when the parties appeared and then permits were issued, after recording their statements. The Petitioner's case is that the permits were issued only on recommendations. The laxity and irregularities in procedure certainly left scope for corrupt practice. It is true that the Tahsildar has usually heavy work and he must have also had extra work in connection with election as stated by him; but even so, the irregularities are so patent and so numerous, that this fact can hardly be considered to be a sufficient or satisfactory explanation thereof.

(g) 197. Shri K. S. Rao, Tahsildar (P.W.32) has deposed that the special permits were not issued at the instance of the Respondent or other persons named in para 25 of the petition. The Respondent denied that he had any connection with them. There is no evidence on the record to show that he was in any way directly concerned with the issue of special permits.

198. According to section 100 (1) (b) of the R.P. Act 1951, the election of a candidate can be declared to be void only if any corrupt practice is found to be committed by the candidate himself or his election agent, or by some person with his 'consent' or the 'consent' of his election agent. In the present instance, the Respondent or his Election Agent do not appear to have had any direct connection with the issue of the special permits. On behalf of the Petitioner reliance has been chiefly placed on the evidence of Gourishankar (P.W.29) relating to the Burman meeting of Congress workers on 13th January 1957, which has been referred to already. It appears from the invitation card (Ex.P-22) for the meeting produced by Gourishankar that this meeting had been called to consider ways and means for improving the Congress prospects for the forthcoming election. According to Gourishankar's evidence the question of 'Nistar' was considered at the meeting and Shri Mushran had stated that he had instructed District Officers (who are alleged to have been present at the meeting) to give facilities for Nistar and that if any persons found difficulty in getting Nistar, they should approach Shri D. P. Pathak and he would arrange to get the permits issued by the Tahsildar. The Respondent, Shri Bagdi was present at this meeting according to the deposition of Gourishankar and if his evidence is accepted, it may be assumed, in the absence of evidence to the contrary, that he was a consenting party to this arrangement. The evidence of Ramsaransingh, Kuber, Babulal, Kalasgir and Manmohan (P.Ws. 39 to 42, 49 and 54) who have deposed that they got permits through Shri Pathak, would have strong corroboration of Gourishankar's evidence; but the evidence of these witnesses has been found to be interested and unreliable. Gourishankar himself is an interested witness, as he left the Congress Party owing to dissatisfaction with the methods of Congress workers and possibly also because he was not nominated as a Congress candidate—and his evidence cannot, therefore, safely be accepted without corroboration. A. N. Mushran (P.W. 53) has stated that Gourishankar was not present at all at the Burman meeting but he too is an interested witness. Gourishankar was a member of the Congress Party on the 13th January 1957, when the Burman meeting was held and in view of the fact that he had been an active member of the Party and the invitation Ex. P-22 produced by him, I am inclined to believe his statement that he was present at the Burman meeting. But for reasons given above, his deposition as regards the announcement about Nistar made by Shri Mushran cannot, in the absence of corroboration, be held to be proved. It follows, therefore, that Shri Bagdi's consent to the issue of special permits through Shri P. D. Pathak also cannot be assumed on the evidence of Gourishankar.

199. On behalf of the Petitioner stress has been laid on the fact that the Respondent had admitted the correctness of the contents of paragraph 4 of the petition in which it is stated that the election campaign and propaganda of all Congress candidates at the last election was joint and that the other Congress candidates were, therefore, agents of the Respondent according to law. On this admission Shri Mushran could be held an 'agent' of the Respondent according to law; but even so, according to the provisions of section 100(1)(b) of the R. P. Act 1951, the Respondent cannot be held to be guilty of any corrupt practice committed by Shri Mushran (if proved) unless it was shown that the latter was acting in the matter with the consent of the Respondent. But there is no reliable evidence on the record to show any such consent.

200. The various irregularities disclosed in the procedure of the Tahsildar in granting special permits, certainly raise suspicion of corrupt practices; but there is no evidence to establish that any 'corrupt practice' was committed by any person in the interest of the Respondent and with the object of inducing electors to vote for him. It may be pointed out further that even if there were any such evidence, the case could not have come within section 100(1)(b), unless 'consent' of the Respondent or his election agent were proved. In the absence of such consent, the election could be set aside only under section 100(1)(d)(ii), if the result of the election were shown to have been 'materially affected'. There is no evidence on the record to prove this. The Respondent obtained some 25,000 votes more than the Petitioner. The number of 'special permits' was only 130. Even if it be assumed, for the sake of argument, that these permits were issued as a result of 'corrupt practice' committed by some interested person and the votes of persons who were given these permits were to be excluded, it is perfectly clear that the result of the election would not have been at all affected. In fact, the case could have been decided briefly even on this short point, but section 99 R. P. Act requires a clear finding to be given as to whether any corrupt practice alleged was or was not committed and hence it was necessary to consider the entire evidence on the record.

201. *Issues No. 18(1) to 18(3)—Paragraph 26 of the petition:*

These issues arise out of paragraph 26 of the petition. It is alleged in this paragraph (as amended) that the Deputy Commissioner, Narsimhapur; the Tahsildar Gadawara and Divisional Forest Officer, Hoshangabad issued a number of leaflets and pamphlets liberalising Nistar rights and these were distributed broadcast in the constituency with the object of furthering the prospects of the Congress candidates. This action is said to have been taken at the instance of the Respondent and Shri S. N. Mushran, Shrimati Sarla Devi Pathak, Shri D. P. Pathak and Shri Kishorilal Paliwal.

202. Six circulars or orders of the kind referred to above have been mentioned in the paragraph;—5 by the Deputy Commissioner, Narsimhapur and 1 from the office of the Tahsildar. Out of the above documents only three have been produced:—

- (1) Circular CHH dated 15th December 1956, issued by the Deputy Commissioner, Narsimhapur (Ex. P 25);
- (2) Order dated 25th January 1957 by the Deputy Commissioner, Narsimhapur (Ex. P-26);
- (3) Order dated 22nd February 1957 of the Deputy Commissioner, Narsimhapur (Ex. P-27);
- (4) Order of the Tahsildar, Narsimhapur dated 21st April 1957 to the Patel of Manegaon.

203. The first three have been proved by the evidence of Shri Mohammad Akbar (P.W. 31). In paragraph 26, an order of the Tahsildar, Gadawara was relied on, but no such order has been produced or proved. Copy of order dated 21st January 1957 by the Tahsildar, Narsimhapur to the Patel of Manegaon was produced but it was not proved and it is not relevant as it is not included in the paragraph. It is, therefore, necessary only to refer to the first three documents.

204. Out of the 3 documents produced, the only important document is Circular CHH, dated the 15th December 1956; order dated 21st January 1957 merely fixes the rates of different kinds of Nistar; while order dated 22nd February 1957 is a similar order passed in supersession of the previous order dated 25th January 1957.

205. The material allegations of the Petitioner in respect of the above orders are—

(i) That they were passed at the instance of Shri S. N. Mushran, Shrimati Sarla Devi Pathak, Shri D. P. Pathak, Shri Kishorilal Paliwal and the Respondent,

and (ii) That they liberalised the Nistar rights with the object of furthering the prospects of the Congress candidates.

206. Shri Mohammad Akbar, Collector of Narsimhapur has deposed that Circular CHH dated 15th December 1956 was issued in pursuance of instructions contained in Government (Land Reforms Department) letter dated 29th October 1956. A printed copy of this letter was produced in Election Case No. 2 of 1957, tried by this Tribunal and was marked as Ex. P-5 in that case. This has been proved by Shri Mohd. Akbar in this case also. Another copy of this letter marked Ex. Y has been obtained and placed on the record for reference. It appears from this letter that a new scheme for Nistar, giving powers to Gram Sabhas, Gram Panchayats, etc. was to come into force from 1st February 1957 and it was in pursuance of this letter that the Collector (P.W. 31) issued the circular order dated 15th December 1956. The Collector has denied that this or any other orders mentioned in the paragraph were issued by him at the instance of the Respondent and other persons named in the paragraph and the Respondent has also denied the allegation in the witness-box.

207. Chaudhary Girirajsingh (P.W. 10) stated in the course of his deposition that Shri Mohammad Akbar, Collector was a friend of his and he was invited by him to dinner in the last week of January and that Shri Mohammad Akbar stated at that time that he was a Mohamdan Officer, appointed as Deputy Commissioner of Narsimhapur for the first time and that Shri S. N. Mushran (Deputy Minister), Shrimati Sarla Devi Pathak, etc. were bringing pressure on him to issue Nistar in abundance to the public and that he had issued some circulars for the purpose at the instance of Shri S. N. Mushran and others. Shri Mohammad Akbar has denied in the witness-box that Chaudhary Girirajsingh was a friend of his or that he had been to dinner at his place or made any such statements as are mentioned by Chaudhary Girirajsingh.

208. From the booklet 'Nistar facilities in Madhya Pradesh' (Ex. Cw5/3) referred to above, it seems clear that the Policy of the Government was to liberalise provision of Nistar for the convenience of the public as far as possible in view of the scarcity of Nistar since the abolition of malguzari and orders for the purpose were issued from time to time. The Government letter dated 29th October 1956 appears to be an order of this type and it was in pursuance of this letter that the Deputy Commissioner had issued this circular No. CHH, dated 15th December 1956.

209. There is thus no evidence to prove the allegations of the Petitioner in paragraph 26, that any circulars were issued by the Deputy Commissioner and other officers named in that paragraph at the instance of the Respondent or other persons named therein. I accordingly hold that these allegations stand unproved.

210. I decide Issues No. 18(1) to 18(3) against the Petitioner and hold that no such corrupt practice as is alleged in paragraph 26 of the petition is proved.

211. In view of the findings arrived at above on the issues framed in this case, I declare under section 98 of the R. P. Act 1951 that the election of the Respondent to the House of People from the Hoshangabad Parliamentary constituency at the last general election is void under section 100(1) (b) of that Act.

212. Under section 99 of the R. P. Act 1951, I record the following findings as regards the 'corrupt practices' alleged in the petition—

(a) The Respondent, Shri Maganlal Bagdi has been proved to be guilty of a 'corrupt practice' under section 123(4) of the R. P. Act 1951, by publication of a leaflet named 'Chetawani' as alleged in paragraph 7(a) of the Petition;

- (b) The Respondent, Shri Maganlal Bagdi has been proved to be guilty of a 'corrupt practice' under section 123(4) of the R. P. Act 1951, in respect of his speech at Narsimhapur on the 19th February 1957, as alleged in paragraph 7(c) of the petition;
- (c) The Respondent, Shri Maganlal Bagdi, has been proved to be guilty of a 'corrupt practice' under Section 123(1) R.P. Act 1951, in respect of a promise regarding the construction of a well made by him to the voters in the village Singhpur, as alleged in paragraph 19 of the petition;
- (d) The Respondent has not been proved to be guilty of any other corrupt practice as alleged in the petition;
- (e) Shri D. P. Pathak, Pleader, Narsimhapur, to whom a notice under section 99 of the R.P. Act 1951, in view of the evidence on record showing that he was a party to the 'corrupt practice' alleged in paragraph 25 of the petition has not been proved to be guilty of any such 'corrupt practice';
- (f) Shri A. N. Mushran, Pleader, Narsimhapur, to whom a notice under section 99 of the R.P. Act 1951 had been issued in view of the evidence on record showing that he was a party to the 'corrupt practice' alleged in paragraph 25 of the Petition, has not been proved to be guilty of any such corrupt practice.

213. Taking into consideration all the circumstances of the case, I award Rs. 700 (seven-hundred only) as costs to the Petitioner—which will be paid to him by the Respondent I leave Shri D. P. Pathak and Shri A. N. Mushran to bear their costs.

214. Under section 103 of the R.P. Act 1951, I direct that copies of the order be sent to the Election Commission, according to instructions received and the record of the case sent to the District Judge Jabalpur, for safe custody.

JABALPUR:

The 20th January, 1958.

(Sd.) M. V. BHIDE,
Election Tribunal, Jabalpur

NOTE:

'Special' permits were to be issued according to the rules in circular 'CHH' dated 15th December 1956, issued by the collector (Ex. P-1), but several material irregularities in procedure are apparent from their records. The most important of these irregularities are as below:—

- (i) Permits issued in cases, where the market price of the timber allowed was above Rs. 200 i.e. beyond the powers given to the Tahsildar. See case nos. 16/56-57, 20/56-57, 23/56-57, 24/56-57, 25/56-57, 28/56-57, 32/56-57, 36/56-57, 39/56-57, 41/56-57, 42/56-57, 45/56-57, 52/56-57, 53/56-57, 58/56-57, 59/56-57, 62/56-57, 64/56-57, 69/56-57, 81/56-57, 82/56-57, 83/56-57, 84/56-57, 85/56-57, 90/56-57, 91/56-57, 93/56-57, 95/56-57, 96/56-57, and 110/56-57.

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- (ii) Permits issued for repairs of houses--when this was not allowed by rules in para 2 of the circular under which they were issued by the Tahsildar. See case nos. 26/56-57, 47/56-57, 55/56-57, 60/56-57, 63/56-57, 72/56-57, 77/56-57, 78/56-57, 81/56-57, 87/56-57 and 92/56-57.
 - (iii) Permits issued merely on the recommendation of the Patwarl which was not permissible under the rules. See case nos. 28/56-57, 36/56-57, 45/56-57, 47 to 49/56-57, 53/56-57, 62/56-57, 67/56-57, 83/56-57 and 90/56-57.
 - (iv) No inquiry was made about the dimensions of the house to be constructed and the quantity of timber which could be allowed according to the scale given in the circular.
 - (v) No inquiry was made as regards the availability of timber from the Forest Department or any other authority concerned.
 - (vi) No date has been given in the first-order-sheet. See case nos. 20/56-57, 22/56-57 and others.
 - (vii) In some cases order-sheets were not opened on the date of presentation of the application, e.g. case No. 24/56-57.
 - (viii) No order-sheets were written on the date when the applicants were examined, case nos. 34/56-57, 41/56-57, etc.
 - (ix) In many cases further dates of hearings were not given in the order-sheets.

S. No.	Rev. case No. and year	Village	Applicant	Date of application	Purpose for which Nistar is required
1	2	3	4	5	6
1	16/56-57	Themi . . .	Mulloosingh . . .	5-2-57	Constructions of new house.
2	20/56-57	Bagaspur . . .	Gorelal . . .	5-1-57	-do-
3	21/56-57	Tighra . . .	Mastram . . .	D.C.'s letter 8-2-57.	-do-
4	22/56-57	Kamti . . .	Sundeilal . . .	Not given.	-do-
5	23/56-57	Sangarur . . .	Nizam singh . . .	8-2-57	-do-
6	24/56-57	Samnapur . . .	Ishwari, pd . . .	not given.	-do-
7	25/56-57	Sagoni Kala . . .	Penna lal . . .	8-2-57	-do-
8	26/56-57	Rehli . . .	Dashrat pd. . .	9-2-57	Repairs of house.
9	27/56-57	Ghubdhar . . .	Manohar Singh . . .	11-2-57	House construction (new)
10	28/56-57	Khurpa . . .	Godhan . . .	7-1-57	-do-
11	29/56-57	Bagaspur . . .	Sarjoo pd. . .	2-1-57	-do-
12	30/56-57	-do- . . .	Chetram . . .	2-1-57	-do-
13	31/56-57	Tidini . . .	Sambholal . . .	22-1-57	-do-
14	32/56-57	Bagaspur . . .	Mansingh . . .	12-2-57	-do-
15	33/56-57	Nandwara . . .	Lachhman Singh . . .	12-2-57	-do-
16	34/56-57	Themi . . .	Dasrath . . .	13-2-57	-do-
17	35/56-57	Gubdhar . . .	Halku . . .	13-2-57	-do-
18	36/56-57	-do- . . .	Maheekumar . . .	27-12-57	-do-
19	37/56-57	Gundari . . .	Tarachand . . .	12-2-57	-do-
20	38/56-57	Khamaria . . .	Hulkar Singh . . .	13-2-57	-do-
21	39/56-57	Kapoori . . .	Komal Singh . . .	12-2-57	-do-
22	40/56-57	-do- . . .	Kubersingh . . .	12-2-57	-do-
23	41/56-57	Magardha . . .	Fadalilal . . .	13-2-57	-do-
24	42/56-57	Sangapur . . .	Khetsingh . . .	13-2-57	-do-
25	43/56-57	Themi . . .	Tejram . . .	13-2-57	-do-
26	44/56-57	Bichhua . . .	Sobharam . . .	13-2-57	-do-
27	45/56-57	Rahli . . .	Swami Manmohan Lal . . .	14-2-57	-do-
28	46/56-57	Case relates to other	permits and not speria timber		
29	47/56-57	Gotegaon . . .	Nandram . . .	14-2-57	Repairs House.
30	48/56-57	Belkhedi . . .	Imrat . . .	13-2-57	Construction of House.
31	49/56-57	-do- . . .	Nanehaji . . .	13-2-57	-do-
32	50/56-57	-do- . . .	Chasita . . .	13-2-57	-do-
33	51/56-57	-do- . . .	Behari . . .	13-2-57	-do-
34	52/56-57	-do- . . .	Sheobharsingh . . .	13-2-57	-do-
35	53/56-57	Samnapur . . .	Bhaosingh . . .	30-1-57	-do- new house.
36	54/56-57	Themi . . .	Saram . . .	12-2-57	-do-
37	55/56-57	Keilari . . .	Tarachand . . .	29-12-56	Repairs of house.
38	56/56-57	Khapa . . .	Umedsingh . . .	13-2-57	Constructions of house.
39	57/56-57	Kapoori . . .	Babulal . . .	14-2-57	-do-
40	58/56-57	Khupra . . .	Roshansingh . . .	6-2-57	-do-
41	59/56-57	Samnapur . . .	Kunjilal . . .	30-1-57	-do-
42	60/56-57	Bour . . .	Ramdas . . .	16-2-57	Repairs of house.
43	61/56-57	Samnapur . . .	Ramsingh . . .	13-2-57	Construction of house.
44	62/56-57	Khamaria . . .	Kishorsingh . . .	1-2-57	-do-
45	63/56-57	Bour . . .	Ramsingh . . .	16-2-57	Repairs house.

By Whom recommended	Quantity of timber		Amount paid	Date of deposit	Date of order
	Applied for	Granted			
7	8	9	10	11	12
Sarpanch . . .	350 Malgas	248 Malgas	199 8 0	5-2-57	5-2-57
Gram Panchayat					
-do- . . .	122 Malgas	96 -do-	161 10 0	7-2-57	7-2-57
-do- . . .	40 carts	40 carts	25 0 0	8-2-57	8-2-57
Patel . . .	130 Malgas	60 Malgas	52 8 0	9-2-57	11-2-57
Sarpanch grampanchayat.	218 "	120 "	120 0 0	9-2-57	13-2-57
-do- . . .	135 "	58 "	104 4 0	8-2-57	8-2-57
Patel . . .	300 "	150 "	132 4 0	8-2-57	8-2-57
Patwari . . .	128 "	100 "	75 0 0	13-2-57	13-2-57
Sarpanch Grampanchayat	100 "	75 "	75 0 0	11-2-57	11-2-57
-do- . . .	318 "	137 "	156 14 0	9-2-57	11-2-57
-do- . . .	184 "	80 "	67 8 0	9-2-57	11-2-57
-do- . . .	102 "	68 "	60 0 0	9-2-57	11-2-57
Patel . . .	153 "	80 "	90 0 0	9-2-57	11-2-57
Patel & Others	130 "	92 "	118 0 0	12-2-57	12-2-57
-do- . . .	69 "	88 "	79 8 0	12-2-57	12-2-57
Patel & sarpanch	60 "	50 "	45 0 0	12-2-57	13-2-57
-do- . . .	70 "	65 "	60 0 0	13-2-57	13-2-57
Patwari . . .	500 "	102 "	190 8 0	13-2-57	12-2-57
Sarpach . . .	70 "	60 "	60 0 0	13-2-57	12-2-57
-do- . . .	82 "	60 "	60 0 0	12 2 57	12-2-57
Panch . . .	175 "	95 "	116 4 0	12-2-57	12-2-57
-do- . . .	150 "	90 "	90 0 0	12-2-57	12-2-57
Patel . . .	190 "	130 "	103 12 0	12-2-57	13-2-57
Grampanch . . .	178 "	120 "	120 0 0	13-2-57	13-2-57
Sarpanch . . .	165 "	100 "	93 12 0	-do-	-do-
Patwari & gramshyak	80 "	60 "	45 0 0	-do-	-do-
Patwari . . .	154 "	135 "	118 2 0	do-	do
permit					
Patwari . . .	150 "	90 "	78 12 0	14-2-57	14-2-57
Patwari . . .	130 "	60 "	60 0 0	14-2-57	14-2-57
Patwari . . .	100 "	66 "	42 12 0	14-2-57	14-2-57
-do- . . .	110 "	68 "	45 12 0	14-2-57	14-2-57
-do- . . .	50 "	38 "	34 8 0	14-2-57	14-2-57
Sarpanch . . .	210 "	140 "	120 0 0	14-2-57	14-2-57
-do- . . .	95 "	95 "	84 4 0	13-2-57	13-2-57
Patwari . . .	80 "	80 "	64 0 0	14-2-57	15-2-57
-do- . . .	50 "	26 "	12 0 0	15-2-57	15-2 57
Patel & patwari . . .	80 "	20 "	30 0 0	15-2-57	15-2-57
-do- . . .	80 "	20 "	30 0 0	15-2-57	15-2-57
Sirpanch . . .	200 "	150 "	168 12 0	15-2-57	15-2-47
-do- . . .	200 "	140 "	135 0 0	15-2-57	15-2-57
Patel . . .	55 "	45 "	37 8 0	16-2-57	16-2-57
Sirpanch . . .	45 "	45 "	37 8 0	16-2-57	16-2-57
Patwari . . .	160 "	120 "	120 0 0	16-2-57	16-2-57
Patel . . .	50 "	40 "	30 0 0	16-2-57	16-2-57

1	2	3	4	5	6
46	64/56-57	Kareli . .	Ganeshpd .	14-2-57	Do.
47	65/56-57	Magardha . .	Premsingh .	15-2-57	Do.
48	65/56-57	Baretha . .	Chitaman .	16-2-57	Construction of new house.
49	67/56-57	Magardha . .	Jadanathpd .	16-2-57	Do.
50	68/56-57	Iarjole . .	Umedsingh .	8-1-57	Do.
51	69/56-57	Iatalpur . .	Tophansingh .	16-2-57	Do.
52	70/56-57	Nawalgaon .	Gulabsingh .	No date in the order sheet	Do
53	71/56-57	Do. .	Halke . .	Do.	Do.
54	72/56-57	Do. .	Baliram . .	Do	Repair of house
55	73/56-57	Do. .	Harprasad .	Do	Construction of new house
56	74/56-57	Do . .	Damtoo . .	Do.	Do
57	75/56-57	Bouchhar . .	Amjadali . .	13-2-57	Do
58	76/56-57	Richhai . .	Kodulal . .	13-2-57	Do.
59	77/56-57	Nawalgaon .	Chhidemilal .	No date in order sheet	Repairs of house
60	78/56-57	Bouchhar . .	Chhidamulal .	13-2-57	Do.
61	79/56-57	Nawalgaon .	Chandrabhan .	20-2-57	Construction of house
62	80/56-57	Naya Khoda .	Gayapd . .	12-2-57	Construction of house
63	81/56-57	Bagulai . .	Biranlal . .	No date in order sheet	Repairs of house.
64	82/56-57	Kimodi . .	Okhulal . .	Do	Construction of new house.
65	83/56-57	Pindrai . .	Roopchand .	20-2-57	Repairs of house.
66	84/56-57	Bagaspur . .	Chhatarsingh .	20-2-57	Construction of house
67	85/56-57	Kalmeta . .	Narayanpd .	18-2-57	Do.
68	86/56-57	Mahmadpur .	Ch. Babulal .	18-2-57	Do.
69	87/56-57	Nayakheda .	Sheopd . .	12-2-57	Repairs of house
70	88/56-57	Do. .	Pitamber . .	12-2-57	Do
71	89/56-57	Narsimhapur .	Parmanand .	15-1-57	Construction of new house.
72	90/56-57	Bamohri . .	Hiralal . .	20-2-57	Do.
73	91/56-57	Kapoori . .	Phoolsingh .	7-1-57	Do
74	92/56-57	Malkuhi . .	Ujyarsingh .	22-1-57	Repairs of house.
75	93/56-57	Badodiya . .	Rewaram . .	19-2-57	Construction of house.
76	94/56-57	Mekhi . .	Nabbe . .	21-2-57	Do.
77	95/56-57	Naya Kheda .	Balkishan .	12-2-57	Do.
78	96/56-57	Dan thana .	Bhawandas .	20-2-57	Do
79	97/56-57	Mohas . .	Narmada pd .	No date	Do
80	98/56-57	Amgion . .	Binaji . .	8-2-57	Do
81	99/56-57	Do. .	Govindsingh .	22-2-57	Do.
82	100/56-56	Khemaria . .	Nanha . .	No date	Do
83	101/56-57	Do . .	Tulsiram . .	Do.	Do.
84	102/56-57	Do. .	Ramprasad .	Do.	Do.
85	103/56-57	Narsimhapur .	Gulabchand .	22-2-57	Do.
86	110/56-57	Relhi . .	Kailasgir . .	20-2-57	Do
87	131/56-57	Menawari .	Ramsatan singh	Not given	Repairs of house.

7	8	9	10	11	12
Patwari . . . 169	"	100	"	112 8 0 16-2-57	16-2-57
Sirpanch . . . 130	"	90	"	78 12 0 18-2-57	18-2-57
Sirpanch and Patel etc. 153	"	100	"	90 0 0 18-2-57	18-2-58
Patwari . . . 175	"	110	"	78 12 0 18-2-57	18-2-57
Patwari . . . 126	"	45	"	48 12 0 18-2-57	18-2-57
Patel and Nistar panch. 100	"	100	"	112 8 0 18-2-57	18-2-57
Sirpanch N/Sabha . 100	"	35	"	33 12 0 14-2-57	14-2-57
Do. . . 150	"	65	"	60 0 0 14-2-57	14-2-57
Do. . . 150	"	65	"	60 0 0 14-2-57	14-2-57
Do. . . 140	"	70	"	62 8 0 14-2-57	14-2-57
Do. . . 166	"	60	"	60 0 0 14-2-57	14-2-57
Sirpanch N/Panchayat 80	"	50	"	52 8 0 14-2-57	14-2-57
Do. . . 150	"	40	"	41 4 0 14-2-57	14-2-57
Do. . . 158	"	85	"	60 0 0 14-2-57	14-2-57
Do. . . 75	"	50	"	52 8 0 14-2-57	14-2-57
Sirpanch N/Committee. 30	"	30	"	37 8 0 20-2-57	20-2-57
Sirpanch G/Panchayat 147	"	75	"	75 0 0 21-2-57	21-2-57
Do. . . 120	"	130	"	105 0 0 1-3-57	20-2-57
Nistar Sabha Patwari 200	"	125	"	145 0 0 18-2-57	20-2-57
Do. . . 276	"	186	"	150 0 0 18-2-57	20-2-57
Panch Gram Panchyat. 150	"	160	"	135 0 0 21-2-57	21-2-57
No recommendations 176	"	120	"	120 0 0 21-2-57	21-2-57
Do. . . 60	"	56	"	30 0 0 21-2-57	21-2-57
Sirpanch . . . 106	"	70	"	62 8 0 21-2-57	21-2-57
Patel . . . 89	"	80	"	82 8 0 21-2-57	21-2-57
Patel & Patwari . . 120	"	80	"	75 0 0 21-2-57	21-2-57
Patwari . . . 140	"	110	"	105 0 0 21-2-57	21-2-57
Patel . . . 174	"	105	"	105 0 0 21-2-57	21-2-57
N/Sabha . . . 70	"	50	"	41 4 0 21-2-57	21-2-57
Sirpanch G/Panchyat 130	"	130	"	120 0 0 22-2-57	22-2-57
Do. . . 93	"	52	"	48 0 0 22-2-57	22-2-57
Patwari and N/Committee . 150	"	100	"	105 0 0 21-2-57	21-2-57
Patel & Patwari . . 250	"	150	"	112 8 0 23-2-57	22-3-57
Patwari & some village people . . 65	"	65	"	67 8 0 22-2-57	1-3-57
Nistar com. . . 230	"	100	"	90 0 0 1-3-57	9-3-57
Sirpanch G/Panchyat 130	"	100	"	90 0 0 1-3-57	9-3-57
Patel & Patwari . . 30	"	30	"	33 12 0 22-2-57	11-3-57
Do. . . 30	"	30	"	30 0 0 22-2-57	11-3-57
Do. . . 30	"	35	"	37 8 0 22-2-57	11-3-57
Patel . . . 120	"	100	"	90 0 0 11-3-57	11-3-57
Village people . . 175	"	110	"	105 0 0 11-3-57	11-3-57
Member G/Panchyat 200	"	130 on 16-2-57	"	90 0 0 10-4-57	16-2-57

80 on 6-4-57

Case No.	Name of applicant	Purpose for which granted
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16/56-57	Mullosingh (cultivator)	Construction of house.
32/56-57	Mansingh (Cultivator)	Construction of house.
55/56-57	Tarachand (cultivator)	Construction of house.
22/56-57	Sunderlal (village Servant)	Construction of house.

Quantity admissible under No. CHHH dated the
15th December 1956 of D. C. Narsimhapur

Quantity granted

12" to 15"	15" to 18"	19" to 24"	30" to 36"	1'	1½'	2'
20	15	10	2·18	100	80	68
20	15	10	2·18	40	30	20
20	15	10	2·18	50	..	30
16	16	7	50	10

[No. 82/403/57.]

By order,

A. KRISHNASWAMY AIYANGAR, Secy.

